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1938

BY

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ABBREVIATIONS EXPLAINED

Reports.

I.L.R. (1938) All.	Indian Law Reports, Allahabad Series.
A.L.J.	..	..	..	Allahabad Law Journal.
A.L.R.	..	..	..	Allahabad Law Reports.
A.W.R.	..	..	..	Allahabad Weekly Reporter.
A. Cr C.	..	..	..	Allahabad Criminal Cases.
A.I.R. 1938 All. or 1938 A.	..	..	..	All India Reporter, 1938 Allahabad.
A.M.L.J.	..	..	..	Ajmer-Merwara Law Journal.
I L R (1938) Bom.	..	..	..	Indian Law Reports, Bombay Series
Bom. L. R.	..	..	..	Bombay Law Reporter
A. I R. 1938 Bom. or 1938 Bom.	..	..	..	All India Reporter, 1938 Bombay.
Bur. L T	..	..	..	Burma Law Times.
Bur. L J.	..	..	..	Burma Law Journal.
BR	..	..	..	Bihar Reports.
I L R. (1938) 1 & 2 Cal.	..	..	..	Indian Law Reports, Calcutta Series.
C. L. J.	..	..	..	Calcutta Law Journal.
Cr. L. J.	..	..	..	Criminal Law Journal.
C. W. N.	..	..	..	Calcutta Weekly Notes.
A. I. R. 1938 Cal. or 1938 Cal.	..	..	..	All India Reporter, 1938 Calcutta.
A. I. R. 1938 F C.	..	..	..	All India Reporter, 1938 Federal Court
I. A.	..	..	..	Law Reports, Indian Appeals.
A. I R. 1938 P C.	..	..	..	All India Reporter, 1938 Privy Council.
I. C.	..	..	..	Indian Cases.
R. P. C.; R. A.; R B; R. C.; R. L.; R M.;	..	..	..	Indian Rulings, Privy Council, All, Bom,
R. N.; R O; R. P.; R. R.; K. S.	..	..	..	Cal, Lah., Mad., Nag., Oudh, Pat, etc.
I L R (1938) Lah.	..	..	..	Indian Law Reports, Lahore Series
A. I R. 1938 Lah or 1938 Lah	..	..	..	All India Reporter, 1938 Lahore.
Lah L. T. or L L T	..	..	..	Lahore Law Times.
L. B. R.	..	..	..	Lower Burma Rulings.
L. W.	..	..	..	Law Weekly.
Luck	..	..	..	Indian Law Reports, Lucknow Series.
I L R (1938) Mad	..	..	..	Indian Law Reports, Madras Series.
(1938) M. L. J.	..	..	..	Madras Law Journal.
M. L. T.	..	..	..	Madras Law Times.
M. W. N.	..	..	..	Madras Weekly Notes.
A. I. R. 1938 Mad or 1938 Mad	..	..	..	All India Reporter, 1938 Madras.
Mys. H. C. R.	..	..	..	Mysore High Court Reports
Mys. L J.	..	..	..	Mysore Law Journal.
I L R (1938) Nag.	..	..	..	Indian Law Reports, Nagpur Series.
N. L. J.	..	..	..	Nagpur Law Journal.
N. L. R.	..	..	..	Nagpur Law Reports.
A I. R. 1938 Nag. or 1938 Nag	..	..	..	All India Reporter, 1938 Nagpur.
O. C.	..	..	..	Oudh Cases
A. I. R. 1938 Oudh or 1938 Oudh	..	..	..	All India Reporter, 1938 Oudh.
O. A.	..	..	..	Oudh Appeals
O. L. J.	..	..	..	Oudh Law Journal.
O. L. R.	..	..	..	Oudh Law Reports.
O. W. N.	..	..	..	Oudh Weekly Notes.
P. R.	..	..	..	Punjab Record
P. L. R.	..	..	..	Punjab Law Reporter.
P. W. R.	..	..	..	Punjab Weekly Reporter.
Pat. or P.	..	..	..	Indian Law Reports, Patna Series.
P. H. C. C.	..	..	..	Patna Supplement to C. W. Notes.
A. I. R. 1938 Pat. or 1938 Pat.	..	..	..	All India Reporter, 1938 Patna.
Pat. L. J.	..	..	..	Patna Law Journal
Pat. L. T.	..	..	..	Patna Law Times.
P. W. N.	..	..	..	Patna Weekly Notes.
A. I. R. 1938 Pesh.	..	..	..	All India Reporter, 1938 Peshawar.
R. or Rang.	..	..	..	Indian Law Reports, Rangoon Series
1938 Rang. L.R.	..	..	..	Rangoon Law Reports.
A. I R 1938 Rang or 1938 Rang..	..	..	..	All India Reporter, 1938 Rangoon.
R. D.	..	..	..	Revenue Decisions.
S. L. R.	..	..	..	Sind Law Reporter.
A. I. R. 1938 Sind or 1938 Sind	..	..	..	All India Reporter, 1938 Sind.
T. L. R.	..	..	..	Travancore Law Reports.
T. L. J.	..	..	..	Travancore Law Journal.
T. L. T.	..	..	..	Travancore Law Times.
U B. R.	..	..	..	Upper Burma Rulings
Co.L.J.	..	..	..	Cochin Law Journal.

Other Abbreviations.

Appl.	..	Applied.	Disc.	..	Discussed.	P. C.	..	Privy Council
Appr.	..	Approved	Duss.	..	Dissenting from,	Ref or R.	..	Referred.
Comm.	..	Commented.	Doubt	..	Doubted	Rel.	..	Relied.
Cons.	..	Considered	Expl.	..	Explained.	Rev.	..	Revenue
Cr.	..	Criminal.	Foll.	..	Followed.	S. B.	..	Special Bench.
Dist or D	..	Distinguished.	F. B.	..	Full Bench.			

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— 160 Rel. 13 Luck 523.
- 15 I.A. 12-10 All 186 Ref. 42 C.
W.N. 949.
— 18 Ref. 19 P.L.T. 246.
— 81 Ref. 40 P.L.R. 146.
— 127 Ref. 13 Luck. 35.
— 211-11 All 47 (P.C.) Ref.
(1938) 2 M.L.J. 688.
- 16 I.A. 137-17 Cal. 5 Ref. 31
Luck 344, Foll. 42 C.W.N.
1138, 13 Luck. 577; Ref.
(1938) 2 M.L.J. 623.
- 17 I.A. 17-17 Cal. 436 (P.C.)
Ref. (1938) 1 M.L.J. 73.
— 98 Dist. 13 Luck. 680.
— 110-18 Cal. 10 Ref. (1938)
2 M.L.J. 802.
— 122 Ref. 40 P.L.R. 573.
— 194-18 Cal. 167 (P.O.)
Ref. (1938) 1 M.L.J. 710.
- 18 I.A. 6 Ref. 1938 Rang.L.R.
330.
— 144 Ref. 40 Bom.L.R. 132.
- 19 I.A. 158 Ref. 13 Luck. 138,
Foll. 40 Bom.L.R. 539.
- 20 I.A. 30-19 Cal. 236 Appl. 40
Bom.L.R. 876 Ref. I.L.R.
1938 Bom. 723.
— 39-16 Bom. 374 Dist. I.L.
R. 1938 Bom. 184.
— 69-19 Cal. 312 (P.O.)
Ref. (1938) 2 M.L.J. 434.
— 166 Rel. 1938 O.W.N. 758.
— 203-20 Cal. 296 Ref. I.L.
R. 1938 Lab. 296, 1938 A.
L.J. 273-Resaffirmed 42 C.
W.N. 321, Ref. 65 I.A. 75-
(1938) 1 M.L.J. 268-1 I.L.R.
1938 Mad. 360 (P.C.).
— 234-20 Cal. 79 Ref. 42 C.
W.N. 560.
- 21 I.A. 89-20 Cal. 834 Dist.
1938 O.W.N. 454; 42 C.W.
1059.
— 183-21 Cal. 8 Ref. (1938)
2 M.L.J. 44, 42 C.W.N.
1237; Cons. (1938) 2 M.L.J.
852.
- 22 I.A. 1 Ref. 1938 Rang.L.R.
330.
— 12-22 Cal. 519 Foll. I.L.
R. (1938) 2 Cal. 173.
— 31-17 All. 198 Dist.
I.L.R. (1938) 2 Cal. 320.
— 60 Ref. I.L.R. 1938 Lab.
494.
— 162-23 Cal. 26 Ref. I.L.
R. 1938 Bom. 301-40 Bom.
L.R. 33.
— 199 Ref. 42 C.W.N. 1004.
- 23 I.A. 106-19 All. 76 Ref. I.L.
R. (1938) 1 Cal. 187.
- 24 I.A. 10 Ref. I.L.R. 1938 Lab.
494
— 146-2 C.W.N. 550 Ref. 42
C.W.N. 661.
— 164-25 Cal. 1 Rel. I.L.R.
1938 Bom. 292, Ref. 40
Bom.L.R. 394.
- 25 I.A. 195 Foll. 40 Bom.L.R.
119.
- 26 I.A. 32-23 Bom. 544 (P.C.)
Ref. (1938) 1 M.L.J. 146.
— 66-3 C.W.N. 378 Ref. 42
C.W.N. 1053
— 71-1 Bom.L.R. 607 Foll.
40 Bom.L.R. 418.
— 97 Cons. 1938 Rang.L.R.
293.
— 246-1 Bom.L.R. 611 Ref.
40 Bom.L.R. 704 (P.C.)
— 286-4 C.W.N. 1 Cons. 42
C.W.N. 359.
- 27 I.A. 51-2 Bom.L.R. 529 (P.
C.) Ref. 40 Bom.L.R. 937.
— 69-4 C.W.N. 329 Ref. 42
C.W.N. 469, Foll. (1938) 1
M.L.J. 113.
— 168-2 Bom.L.R. 967 Ref.
40 Bom.L.R. 132.
— 216 Appl. (1938) 2 M.L.J.
482.
- 28 I.A. 71-3 Bom.L.R. 386 Ref.
40 Bom.L.R. 132.
— 203-23 All 313 (P.O.)
Ref. 42 C.W.N. 565, Ref.
40 Bom.L.R. 767; (1938) 1
M.L.J. 597, 1938 A.L.J.
293.
— 257-25 Mad. 61 (P.O.)-
11 M.L.J. 233 Ref. 65 I.A.
158-(1938) 1 M.L.J. 647.
- 29 I.A. 1-24 All. 94-12
M.L.J. 66 (P.O.) Disc.
(1938) 1 M.L.J. 298.
— 9 Foll. 1938 Rang.L.R.
430.
— 182 Ref. 40 P.L.R. 616.
- 30 I.A. 1-6 Bom.L.R. 103 Foll.
40 Bom.L.R. 202.
— 35-25 All 109 (P.C.) Ref.
(1938) 1 M.L.J. 487.
— 94-25 All 236 (P.O.)
Expt. I.L.R. 1938 Lab. 383;
Ref. 65 I.A. 198-(1938) A.
L.J. 825-40 Bom.L.R. 835-
42 C.W.N. 845-(1938) 2
M.L.J. 1
— 180-30 Cal. 725 (P.O.)
Ref. (1938) 2 M.L.J. 704,
Foll. 40 Bom.L.R. 202.
— 139-30 Cal. 788 Ref. 42
C.W.N. 1021; 40 Bom.L.R.
1068, 1938 A.L.J. 763; Dist.
I.L.R. (1938) 1 Cal. 369.
— 159-30 Cal. 811 Dist. 42
C.W.N. 866, Ref. I.L.R.
(1938) 2 Cal. 41.
— 172 Dist. 13 Luck. 279.
— 182 Ref. 17 Pat. 236.
— 202-7 O.W.N. 831 Foll.
42 C.W.N. 359.
— 221 Rel. (1938) 2 M.L.J.
740
- 31 I.A. 30-26 All 119 Ref. 65
I.A. 139-1938 A.L.J. 301
Dicum of Lindby Foll.
(1938) 1 M.L.J. 731, Rel.
1938 O.W.N. 268.
— 132 Ref. 65 I.A. 139-1938
O.W.N. 268, 1938 A.L.J.
301; (1938) 1 M.L.J. 731.
— 176-8 C.W.N. 786 Ref.
42 C.W.N. 913.
— 203-32 Cal. 129 (P.O.)
Dist. 42 C.W.N. 806, Ref.
(1938) 1 M.L.J. 763.
- 32 I.A. 1-32 Cal. 198 Dist. I.L.
R. (1938) 2 Cal. 243.
— 23-32 Cal. 296 (P.O.)
Dist. (1938) 2 M.L.J. 482.
— 93 Ref. I.L.R. (1938) 1 Cal.
400.
— 113-27 All. 271-15 M.
L.J. 197 (P.O.) Ref. (1938).
1 M.L.J. 610.
— 193-33 Cal. 180 (P.C.)
Rel. 42 C.W.N. 371; Dist.
I.L.R. (1938) 1 Cal. 354;
Foll. I.L.R. (1938) 1 Cal.
531; 42 C.W.N. 422.
— 203-27 All 634 Rel. 1938
O.W.N. 268; (1938) 1 M.L.

- J 654 Ref 65 I.A. 139; I. L.R. (1938) 1 Cal. 626 Dist. (1938) 1 M.L.J. 731.
- 33 I.A. 193 Dist. (1938) 2 M.L.J. 972.
- 34 I.A. 87 Ref. 40 P.L.R. 35.
- 87-34 Cal 329 Ref I.L.R. 1938 Bom. 292-40 Bom L.R. 394
- 115-31 Bom. 381 (P.O.)
- 17 M.L.J. 347 Ref. (1938) 1 M.L.J. 50. Dist. (1938) 2 M.L.J. 740.
- 138-11 C.W.N. 817 (P.O.) Ref 42 C.W.N. 497.
- 35 I.A. 1-30 All 1-17 M.L.J. 605 (P.O.) Div. (1938) 1 M.L.J. 78.
- 48-55 Cal 400-18 M.L.J. 160 (P.O.) Ref. (1938) 1 M.L.J. 610.
- 73 Ref on I.L.R. (1938) 1 Cal. 206.
- 98 Ref. (1938) 2 M.L.J. 817.
- 130-11 C.W.N. 825 Cons. & Ref 42 C.W.N. 161.
- 189-12 C.W.N. 1017. Ref. 42 C.W.N. 1219.
- 195 Ref. (1938) 2 M.L.J. 434.
- 36 I.A. 168-31 All 572 (P.O.) Ref. 17 Pat. 236.
- 192 Ref 1938 Rang L.R. 323.
- 37 I.A. 147-14 C.W.N. 889 Ref. 42 C.W.N. 469.
- 152-32 All 410 Ref 1938 A.I.J. 66, 42 C.W.N. 1212.
- 38 I.A. 31 Ref. (1938) 2 M.L.J. 410
- 45-21 M.L.J. 378-33 All 272 (P.O.) Foll. (1938) 1 M.L.J. 526
- 87 Ref. (1938) 2 M.L.J. 44
- 129-34 Mad. 257-15 O.W.N. 741 Ref. 42 C.W.N. 422 Ref 42 C.W.N. 371.
- 39 I.A. 1 Foll. (1938) 2 M.L.J. 277.
- 7-34 All 63-16 C.W.N. 97 Dist. 17 Pat. 499. Ref. I.L.R. (1938) 1 Cal. 21, 42 C.W.N. 1212
- 49 Ref. & Dist. 19 P.L.T. 35.
- 68 Foll. 1938 Rang L.R. 430. Dist. 17 Pat. 160.
- 158-14 Bom L.R. 1055 Ref. 40 Bom L.R. 132
- 197-40 Cal 21 Ref. 42 C.W.N. 391-I.L.R. (1938) 2 Cal. 103.
- 40 I.A. 31 Cons. 1938 Rang L.R. 293. Ref 13 Luck. 270
- 37-40 Cal. 274 (P.O.) Ref. (1938) 2 M.L.J. 621.
- 40-35 All 80 cited I.L.R. (1938) 1 Cal. 369
- 40 I.A. 58-40 Cal 598 (P.O.)-25 M.L.J. 104. Rel. (1938) 1 M.L.J. 829.
- 132-35 Mad 295-25 M.L.J. 150 (P.O.) Ref & Expl. (1938) 1 M.L.J. 775.
- 223 Ref. (1938) 2 M.L.J. 490.
- 41 I.A. 23 Foll. 1938 O.W.N. 97. Reaffirmed 42 C.W.N. 332. Ref. 40 Bom L.R. 697; 1938 A.L.J. 17
- 25-42 M.L.J.
- 91-18 M.L.J. 7
- 42 C.W.N. (1938)
- 101-18
- 42 C.W.N.
- 110-18
- 42 C.W.N.
- 142 Dist 521.
- 149-41 C.W.N. 295 Ref. L.R. (1938) 2 Cal 295 Ref. 65 I.A. 156, (1938) 1 M.L.J. 647.
- 251-37 M.L.J. 150-42 Cal. 72 (P.O.) Ref. (1938) 1 M.L.J. 471. Dist. (1938) 2 M.L.J. 482.
- 290-42 Cal. 384 Ref. 1938 A.L.J. 670.
- 42 I.A. 1-42 Cal. 801 (P.O.) Ref. 42 C.W.N. 38. Rel. I.L.R. (1938) 1 Cal. 607.
- 64 Ref. I.L.R. (1938) 2 Cal. 492.
- 83-42 Cal. 778 Ref. I.L.R. 1938 Bom. 273.
- 177-29 M.L.J. 329-37 All 545 (P.O.) Ref. (1938) 1 M.L.J. 574.
- 202-37 All 557 Ref. 17 Pat. 223. I.L.R. (1938) 1 Cal. 1.
- 229 Ref. (1938) 2 M.L.J. 434
- 43 I.A. 6-20 C.W.N. 105-43 Cal 493 Ref 65 I.A. 66-I.L.R. (1938) 2 Cal. 72-42 C.W.N. 985, 1938 A.L.J. 169-19 P.L.T. 125- (1938) 1 M.L.J. 640 Foll. 40 Bom L.R. 746.
- 104 Foll. 40 Bom L.R. 371.
- 113-20 C.W.N. 833 (P.O.) Ref. (1938) 1 M.L.J. 334 (F.B.).
- 112 Ref. (1938) 2 M.L.J. 534, 1938 Rang L.R. 316
- 138-39 Mad 509 Ref. 42 C.W.N. 38. Rel. I.L.R. (1938) 1 Cal. 607.
- 151 Ref. I.L.R. (1938) 1 Cal. 369.
- 207-39 Mad 634 Ref. I.L.R. (1938) Bom. 292-40 Bom L.R. 394.
- 43 I.A. 249-44 Cal 186 Ref. 42 C.W.N. 837, 40 Bom L.R. 1029- (1938) 1 M.L.J. 113.
- 256 Ref. 1938 Rang L.R. 190
- 269-38 All 552-31 M.L.J. 804 Ref. 65 I.A. 139-13 Luck. 646-1938 A.L.J. 301- (1938) 1 M.L.J. 731 (P.C.)- (1938) 2 M.L.J. 912. Ref. 1938 O.W.N. 268.
- 72-19 Bom L.R. 424 Ref. 40 Bom L.R. 371.
- 98-32 M.L.J. 389-40 Mad. 402 (P.O.) Ref. (1938) 1 M.L.J. 113.
- 117-44 Cal. 841 Foll. 17 Pat. 315.
- 128 Ref. (1938) 2 M.L.J. 461.
- 147 Ref. 19 P.L.T. 35.
- 159-39 All 498 Mentioned I.L.R. (1938) 1 Cal 369 Ref. (1938) 2 M.L.J. 704.
- 168-33 M.L.J. 144-40 Mad 888 (P.O.) Ref. (1938) 1 M.L.J. 519. Rel. (1938) 2 M.L.J. 452. Foll. (1938) 2 M.L.J. 244.
- 218 Dist. 1938 O.W.N. 360. Ref. 19 P.L.T. 309.
- 238 Ref. (1938) 2 M.L.J. 189
- 261-33 M.L.J. 69-40 Mad. 793 (P.C.) Ref. (1938) 1 M.L.J. 715.
- 45 I.A. 1 Ref (1938) 2 M.L.J. 623.
- 25 Ref. 19 P.L.T. 309.
- 111 Dist. 13 Luck. 159.
- 134 Ref. 13 Luck. 470.
- 148-20 Bom L.R. 1056 Foll. 40 Bom L.R. 960.
- 168 Cons. (1938) 2 M.L.J. 852-23 C.W.N. 328 Ref. 42 C.W.N. 1237.
- 251 Ref. 19 P.L.T. 246.
- 46 I.A. 1-23 C.W.N. 521 Ref. 42 C.W.N. 497.
- 15 Ref. 19 P.L.T. 309.
- 33-46 Cal. 663-36 M.L.J. 312 Ref. (1938) 1 M.L.J. 378.
- 72-42 Mad. 523 Ref. 42 C.W.N. 174, 40 Bom L.R. 876. Dist. 13 Luck.

- 1938 O.W.N. 152, Disc.
(1938) 1 M.L.J. 298, Ref.
40 Bom.L.R. 394=I.L.R.
1938 Bom. 723
- 46 I.A. 135=41 All. 566=23 C.
W.N. 697 Ref. 42 C.W.N.
610; I.L.R. (1938) 1 Cal.
121.
- 228=42 All 158 Rel I.L.
R 1938 Mad. 460=(1938)
1 M.L.J. 159.
- 240=47 Cal 485=57 M.
L.J. 525 Ref 42 C.W.N.
97, 42 C.W.N. 107, (1938)
1 M.L.J. 325 Rel I.L.R.
(1938) 1 Cal 563
- 259=47 Cal 466 Ref I.L.
R 1938 Bom. 723, Rel 40
Bom.L.R. 876.
- 285=22 Bom.L.R. 444
Dist 40 Bom.L.R. 202; Ref.
(1938) 2 M.L.J. 534.
- 284=23 M.W.N. 490 Ref.
42 C.W.N. 47.
- 563 Ref. (1938) 2 M.L.J.
189.
- 47 I.A. 1=43 Mad. 546 Rel. 40
Bom.L.R. 132, 42 C.W.N.
14
- 8=43 Mad 541=38 M.L.
J. 393 (P.O.) Appl. (1938)
1 M.L.J. 154; Foll. (1938)
1 M.L.J. 157, Ref. (1938) 1
M.L.J. 113
- 11 Rel 17 Pat. 180.
- 17=44 Bom. 670 Dist 40
Bom.L.R. 1; (1938) 1 M.L.
J. 545, Ref. I.L.R. 1938
Mad. 91, 42 C.W.N. 8.
- 88 Rel 42 C.W.N. 154
- 124 Ref. 1938 Rang.L.R.
330.
- 207=25 C.W.N. 241 Ref.
42 C.W.N. 721.
- 233=48 Cal. 100 Ref. I.L.
R 1938 Bom 723=40 Bom.
L.R. 876, Rel. 42 C.W.N.
174.
- 48 I.A. 118 Ref. 65 I.A. 198=
1938 A.L.J. 825=1938 O.
W.N. 693, (1938) 2 M.L.J.
1=I.L.R. 1938 Lab. 383;
42 C.W.N. 845=40 Bom.L.
R. 835.
- 30 Dist. I.L.R. (1938) 2
Cal. 1.
- 50 Dist. (1938) 2 M.L.J.
85.
- 244=44 Mad. 643 (P.O.)
Ref. (1938) 1 M.L.J. 552.
- 280=44 Mad. 650 Ref. I.
L.R. (1938) 1 Cal. 652=42
C.W.N. 77.
- 302=44 Mad. 831 Foll.
(1938) 1 M.L.J. 113; Ref.
(1938) 1 M.L.J. 763; I.L.
R. 1938 Bom. 184; I.L.R.
(1938) 1 Cal. 652.
- 335=20 C.W.N. 858 Ref.
41 C.W.N. 698.
- 48 I.A. 349=26 M.W.N. 159 Ref.
I.L.R. 1938 Mad. 551; Appl.
65 I.A. 93, Expl. 40 Bom.L.
R. 704; 42 C.W.N. 449,
1938 A.L.J. 215, (1938) 1
M.L.J. 426.
- 395=44 Mad. 883 (P.G.)
Rel (1938) 1 M.L.J. 190.
- 465=26 C.W.N. 279 Ref.
42 C.W.N. 721.
- 489=26 M.W.N. 465 Ref.
42 C.W.N. 913.
- 513=49 Cal. 1 Ref. I.L.R.
1938 Bom. 84.
- 539=44 Mad 740 Ref.
(1938) 2 M.L.J. 756.
- 49 I.A. 37 Disc. 17 Pat. 350, Ref.
I.L.R. (1938) 1 Cal. 652.
- 54=42 M.L.J. 501=46
Bom. 481 (P.C.) Rel.
(1938) 1 M.L.J. 113.
- 60 Dist. 13 Luck. 357.
- 100 Ref. (1938) 2 M.L.J.
623.
- 144=3 Lab. 127 Ref. 17
Pat. 252.
- 181 Cons (1938) 2 M.L.J.
287.
- 276 Foll. 13 Luck. 697.
- 286=45 Mad. 586 (P.O.)
Incc. (1938) 1 M.L.J. 634.
- 307=27 M.W.N. 166 Ref.
42 C.W.N. 72.
- 331 Expl. I.L.R. (1938) 1
Cal. 231.
- 351 Ref. 1938 O.W.N. 722.
- 358 Ref. 19 P.L.T. 281;
Rel. 40 Bom.L.R. 1068; 42
C.W.N. 1021; 1938 A.L.J.
763.
- 50 I.A. 69 Dist 13 Luck. 697.
- 77=60 Cal 338 (P.O.)
Ref. (1938) 1 M.L.J. 582=
I.L.R. (1938) 1 Cal. 182,
Rel. 19 P.L.T. 489
- 84 Ref. 19 P.L.T. 489.
- 92 Ref. I.L.R. 1938 Bom.
184
- 134=44 M.L.J. 745=46
Mad. 373 (P.O.) Expl.
(1938) 1 M.L.J. 216
- 162=4 Lab 284 (P.G.) Ref.
(1938) 1 M.L.J. 829.
- 183 Ref. 13 Luck. 255.
- 192=4 Lab. 350=45 M.
L.J. 355 (P.G.) Dist. (1938)
1 M.L.J. 574, Ref. (1938)
2 M.L.J. 504.
- 202=45 All 419=46 M.
L.J. 623 (P.O.) Cons.
(1938) 1 M.L.J. 391.
- 227=47 Bom. 742 Rel I.
L.R. (1938) 1 Cal. 476=42
C.W.N. 230
- 239 Foll. 1938 O.W.N. 152.
- 265=25 Bom.L.R. 1005
Foll. 40 Bom.L.R. 439, Ref.
I.L.R. 1938 Bom. 465.
- 50 I.A. 295=46 Mad. 751=45 M.
L.J. 88 (P.C.) Appl. (1938)
1 M.L.J. 113.
- 324 Ref. (1938) 2 M.L.J. 22
- 51 I.A. 24 Ref. (1938) 2 M.L.J.
802.
- 83=47 Mad. 337=46 M.
L.J. 46 (P.C.) Foll. (1938)
1 M.L.J. 634.
- 101=26 Bom.L.R. 595=
46 M.L.J. 610=3 Pat. 279
Foll. 40 Bom.L.R. 132, Rel.
(1938) 1 M.L.J. 676.
- 129=26 Bom.L.R. 500;
Ref. 40 Bom.L.R. 947=
(1938) 2 M.L.J. 451.
- 140 Foll. 1938 Rang.L.R.
430=17 Pat. 154.
- 190=54 Cal. 595=52 M.
L.J. 734 (P.O.) Ref. (1938)
1 M.L.J. 413
- 257 Ref. (1938) 2 M.L.J.
434.
- 305 Ref. 13 Luck. 680.
- 51 I.A. 1 Ref. 1938 Rang.L.R.
450.
- 61 Ref. (1938) 2 M.L.J. 165
- 83=27 Bom.L.R. 785
Foll. 40 Bom.L.R. 202, Ref.
(1938) 2 M.L.J. 704; Expl.
17 Pat. 430.
- 100=29 C.W.N. 749 Ref.
42 C.W.N. 110, 42 C.W.
N. 560; Dist. 13 Luck. 323.
- 160=30 C.W.N. 1 Ref. 42
C.W.N. 913, 42 C.W.N.
1030.
- 245=52 Cal. 809=49 M.
L.J. 30 (P.O.) Dist. (1938)
1 M.L.J. 193
- 262=47 All 385=49 M.
L.J. 245 (P.O.) Ref. (1938)
1 M.L.J. 686.
- 322=30 C.W.N. 318 Ref.
42 C.W.N. 1237; Cons.
(1938) 2 M.L.J. 852
- 342 Foll. 1938 O.W.N. 97;
Re-affirmed 42 C.W.N. 332,
Ref. 1938 O.W.N. 531, Rel
1938 A.L.J. 176; 40 Bom.
L.R. 697.
- 385=49 M.L.J. 282=3
Bang. 494 (P.C.) Rel.
(1938) 1 M.L.J. 519 Dist.
(1938) 1 M.L.J. 17
- 53 I.A. 6 Rel. 1938 A.L.J. 169.
- 21=5 Pat 312 Rel I.L.
R. 1938 Bom. 155=40
Bom.L.R. 147.
- 36=28 Bom.L.R. 851 Dist.
40 Bom.L.R. 1029, Quaere
40 Bom.L.R. 521.
- 187=48 All 457 (P.C.)
Ref. (1938) 2 M.L.J. 251.
- 54 I.A. 33 Ref. 1938 A.L.J. 825;
Ref. 65 I.A. 198=42 C.W.
N. 845=(1938) 2 M.L.J. 1
=1938 O.W.N. 698 (P.C.)
=I.L.R. 1938 Lab. 383=
40 Bom.L.R. 835.

- 54 I.A. 68 Ref. 13 Luck. 215.
 — 79 Dist. 13 Luck. 230.
 — 69-29 Bom L.R. 833
 Foll. 40 Bom L.R. 428
 — 96 Ref. 65 I.A. 154-1 L.R.
 (1938) 2 Cal. 295-42 C.W.N.
 N. 621-1938 A.L.J. 352-
 40 Bom L.R. 787, (1938) 1
 M.L.J. 647.
 — 122-29 Bom L.R. 848
 Ref. 40 Bom L.R. 1005
 — 178 Dist. 19 P.L.T. 555
 — 238 Dist. (1938) 1 M.L.J.
 193
 — 248-29 Bom L.R. 969
 Foll. 40 Bom L.R. 443
 — 272-32 C.W.N. 1 Dist. 13
 Luck. 340, Ref. 42 C.W.N.
 N. 437 Foll. 1938 O.W.N.
 360
 — 338-32 C.W.N. 61 Ref. 42
 C.W.N. 1059 1938 A.L.J.
 894 (1938) 2 M.L.J. 44
 — 386 Dist. 1938 O.W.N. 152
 — 421-32 C.W.N. 257 Ref.
 (1938) 2 M.L.J. 44, 42 C.
 W.N. 38
 55 I.A. 7 Ref. L.L.R. 1938 Mad.
 52, Foll. 13 Luck. 657.
 — 81-32 C.W.N. 629 Ref.
 42 C.W.N. 718.
 — 161 Ref. 42 C.W.N. 72,
 Ref. (1938) 2 M.L.J. 283.
 — 227 Foll. 1938 Rang L.R.
 355
 — 258-51 Mad. 349 Ref. 17
 Pat. 446
 — 360-52 Bom. 587-32 O
 W.N. 853 Ref. 42 C.W.N.
 97, Ref. I L.R. (1938) 1
 Cal. 563.
 56 I.A. 1-61 All. 182-33 C.W.
 N. 242 Ref. I L.R. (1938)
 1 Cal. 665-42 C.W.N.
 1121
 — 51-53 Bom. 230 (P.C.)
 Ref. (1938) 2 M.L.J. 490.
 — 182-31 Bom. L.R. 816
 Cons. I L.R. 1938 Bom. 1,
 Ref. & Foll. (1938) 2 M.L.
 J. 822.
 — 182-51 All. 387 Appl.
 (1938) 1 M.L.J. 101.
 — 232-38 Lab. 737-57 M
 L.J. 281 Expl. & Dist. I.L.
 R. 1938 Mad. 598-(1938) 1
 M.L.J. 628
 — 267-33 C.W.N. 809 Ref.
 42 C.W.N. 1237; Cons.
 (1938) 2 M.L.J. 852
 57 I.A. 21-64 Bom. 213 Dist. 42
 C.W.N. 194, Ref. 65 I.A. 1
 -1938 A.L.J. 46-I L.R.
 1938 Bom. 239 (P.C.)-
 (1938) 1 M.L.J. 1.
 — 24-34 C.W.N. 201 Ref.
 42 C.W.N. 793-I L.R.
 (1938) 2 Cal. 418.
 — 86-59 M.L.J. 53-11
 Lab. 189 Foll. (F.B.) 1938
 O.W.N. 706, Ref. 1938 O.
 W.N. 744, (1938) 1 M.L.J.
 487.
 57 I.A. 100 Expl. & Dist. I.L.R.
 1938 Mad. 479.
 — 110 Ref. I L.R. (1938) 1
 Cal. II
 — 125-57 Cal. 1293-34 O
 W.N. 462 Ref. 42 C.W.N.
 445, (1938) 2 M.L.J. 434.
 Ref. (1938) 1 M.L.J. 113
 — 189-34 C.W.N. 661 Ref.
 42 C.W.N. 1004.
 — 214-58 Cal. 301-34 O
 W.N. 821 Ref. 42 C.W.N.
 701, Foll. I L.R. (1938) 2
 Cal. 266.
 — 325-11 Lab. 657-59 M.
 L.J. 621 (P.C.) Ref. (1938)
 1 M.L.J. 334 (F.B.)
 — 333-58 Cal. 692-35 O
 W.N. 93 Ref. 42 C.W.N.
 97 Ref. I L.R. (1938) 1
 Cal. 563
 58 I.A. 68-64 Mad. 257 Ref. I.
 L.R. (1938) 1 Cal. 187.
 — 91-58 Cal. 1235-35 O.
 W.N. 550 Dist. 1938 Rang
 L.R. 430, Ref. 42 C.W.N.
 38 42 C.W.N. 630, Ref. 19
 P.L.T. 489
 — 115-33 Bom. L.R. 867
 Foll. 40 Bom. L.R. 884
 — 125 Ref. (1938) 2 M.L.J.
 434.
 — 158 Ref. (1938) 2 M.L.J.
 775.
 — 169 Ref. (1938) 2 M.L.J.
 863
 — 173 Ref. (1938) 2 M.L.J.
 756.
 — 215-59 Cal. 1-61 M.L.
 J. 208 (P.C.) Ref. (1938)
 1 M.L.J. 686
 — 220 Foll. 40 Bom. L.R. 202,
 Ref. I L.R. (1938) 1 Cal.
 369.
 — 254-10 Pat. 654-61 M.
 L.J. 489 Ref. 1938 O.W.N.
 429, (1938) 1 M.L.J. 50.
 — 279-35 C.W.N. 853 Ref.
 42 C.W.N. 1131.
 — 372-59 Cal. 576-61 M.
 L.J. 442 Appl. 65 I.A. 93-
 (1938) 1 M.L.J. 232; Foll.
 (1938) 1 M.L.J. 426, Expl.
 1938 A.L.J. 215, 40 Bom.
 L.R. 704, 42 C.W.N.
 449, Ref. I L.R. 1938 Mad.
 551.
 — 402-33 Bom. L.R. 1626
 Ref. 40 Bom. L.R. 937.
 59 I.A. 1-6 Luck. 556 Ref. 1938
 A.L.J. 843; 40 Bom. L.R.
 843; 42 C.W.N. 901; 13
 Luck. 494.
 — 56-56 Mad. 268-62 M.
 L.J. 213 Mentioned (1938)
 1 M.L.J. 519.
 — 180 Appl. 1938 O.W.N.
 454.
 59 I.A. 161 Ref. 1938 A.L.J. 585;
 Ref. I L.R. 1938 All. 563
 (F.B.).
 — 206-36 W.W.N. 653-63
 M.L.J. 124 I L.R. 1938
 Bom. 752, 40 Bom. L.R.
 916, 42 C.W.N. 1070;
 I L.R. 1938 Mad. 25, I.L.
 R. 1938 Mad. 1, Foll.
 (1938) 1 M.L.J. 502 Ref.
 — 247 Ref. (1938) 2 M.L.J.
 775.
 — 258 Foll. 40 Bom. L.R. 269,
 Expl. 42 C.W.N. 257, Ref.
 I L.R. 1938 Bom. 249-65
 I.A. 32, 1938 A.L.J. 87;
 (1938) 1 M.L.J. 161.
 — 283 Ref. 42 C.W.N. 698;
 19 P.L.T. 243, 19 P.L.T.
 424.
 — 300 Expl. (1938) 2 M.L.J.
 756.
 — 366 Ref. (1938) 2 M.L.J.
 802.
 — 376-36 C.W.N. 1017 Dist.
 42 C.W.N. 545, Ref. 1938
 O.W.N. 360
 — 405-13 Lab. 702-68 M.
 L.J. 664 (P.C.) Mentioned
 (1938) 1 M.L.J. 715.
 — 414-60 Cal. 889 Dist. I.L.
 R. (1938) 2 Cal. 134.
 60 I.A. 115-38 M.W.N. 393 Ref.
 42 C.W.N. 1090.
 — 124-12 Pat. 261-65 M.
 L.J. 605 Foll. (1938) 1 M.
 L.J. 113, Ref. 42 C.W.N.
 469.
 — 133-64 M.L.J. 544-
 12 Pat. 305 (P.C.) (1938)
 1 M.L.J. 14 (F.B.).
 — 176-57 W.W.N. 629 Ref.
 42 C.W.N. 334.
 — 196-65 M.L.J. 285-60
 Cal. 1029 (P.C.) Dist. 65 I.
 A. 150, 1938 A.L.J. 261-
 40 Bom. L.R. 780, 42 Cal.
 W.N. 537, 19 P.L.T. 290;
 (1938) 1 M.L.J. 704.
 — 203-65 M.L.J. 1-56
 Mad. 570 (P.C.) Mention-
 ed (1938) 1 M.L.J. 345 Ref.
 42 C.W.N. 8.
 — 242-36 Bom. L.R. 859
 Foll. 40 Bom. L.R. 559.
 — 278-1938 A.L.J. 762 Expl.
 & Ref. 1938 A.L.J. 680.
 — 325 (P.C.) Foll. 1938 A.L.
 J. 587.
 — 354-35 C.W.N. 11 Dist.
 42 C.W.N. 1.
 — 362-35 Bom. L.R. 137
 Foll. 40 Bom. L.R. 884.
 61 I.A. 10-61 Cal. 285 Ref. 65 I.
 A. 236; 1938 A.L.J. 754-
 I.L.R. 1938 Bom. 487; 40
 Bom. L.R. 854, 40 C.W.N.
 873, (1938) 2 M.L.J. 115.
 — 35-38 C.W.N. 335 Ref.
 42 C.W.N. 1032.

- 61 I.A. 41=38 C.W.N. 375 Foll.
42 C.W.N. 440.
—50 H sc. 19 P.L.T. 367.
—52=38 Bom L.R. 237
Mentioned 40 Bom.L.R.411.
—93 Ref 1938 O.W.N. 744.
—163 Foll. 1938 O.W.N. 706
—171=61 Cal 470=66 M.L.J. 506 (P.C.) Foll. (1938)
1 M.L.J. 92
—200=38 Bom L.R. 563=
57 Mad. 749 Ref. I.L.R.
1938 Bom 723=40 Bom L.
R. 876, Ref 42 C.W.N. 174
—235=9 Luck. 407 Foll. 13
Luck. 672.
—257=57 Mad. 931(P.C.)=
67 M.L.J. 167 Dist. (1938)
1 M.L.J. 574
—288 Ref 13 Luck. 484.
—350 Ref (1938) 2 M.L.J.
399
—388=58 Bom 850=39 O
W.N. 34 Dist I.L.R.
(1938) 2 Cal 328, Ref I.L.
R. (1938) 1 Cal. 607=42 C.
W.N. 38, 42 C.W.N. 630
=42 C.W.N. 1028
—405 Ref 40 Bom L.R. 1041.
—416 Ref. 65 I.A. 75, 65 I.
A. 263.
- 62 I.A. 47=39 C.W.N. 541 Ref
42 C.W.N. 469
—53=39 C.W.N. 405 Ref.
40 Bom L.R. 1057, 42 C.
W.N. 687.
—146 Dist 40 Bom L.R. 1041,
Foll 40 Bom.L.R. 907, Ref
65 I.A. 252, 1938 A.L.J.
799, 42 C.W.N. 1013, 1938
O.W.N. 693, I.L.R. 1938
Lab 453
—174=59 Bom. 496=39 M
W.N. 929 Ref 42 C.W.N.
129, Ref. I.L.R. (1938) 1 Cal.
290
- 63 I.A. 74=59 Mad. 175=38
Bom L.R. 133 (P.C.) Dist.
I.L.R. 1938 Bom. 374
—59 Mad. 446 Dist. I.L.R.
(1938) 1 Cal. 48.
—169 Ref. 13 Luck. 484.
—233 Cons. (1938) 2 M.L.J.
287.
—261=71 M.L.J. 105=59
Mad. 809 (P.C.) Appl.
(1938) 1 M.L.J. 113.
—279=38 Bom. L.R. 739
Foll. 1938 A.L.J. 288, Ref.
40 Bom.L.R. 1053, 42 C.W.
N. 989.
—384=17 Lab. 614; Dist.
I.L.R. (1938) 2 Cal 243.
—397 Ref. (1938) 2 M.L.J.
704.
- 64 I.A. 55=41 C.W.N. 554 Ref.
42 C.W.N. 1186.
—67=16 Pat. 127, (1937)
1 M.L.J. 254 (P.O.) Foll
(1938) 1 M.L.J. 417, Ref. I.
L.R. 1938 Bom. 263.
- 64 I.A. 215 Foll. I.L.R. 1938 Lab.
426.
65 I.A. 66=42 C.W.N. 985 Ref.
42 C.W.N. 1034.
—132=I.L.R. 1938 All. 826
Dist. I.L.R. (1938) 2 Cal.
320
- I.L.R. ALLAHABAD SERIES.**
1 All. 249 Ref. 13 Luck. 444.
—296 Ref. 40 P.L.R. J. & K.
31.
—465 Ref. I.L.R. 1938 All.
125=1938 A.L.J. 23.
—478 Foll. 17 Pat. 308.
—557 Disc. 19 P.L.T. 511.
2 All. 241 (P.C.) Expt 17 Pat.
281, Ref. 19 P.L.T. 8, 1938
Rang L.R. 629.
—682 Ref. (1938) 1 M.L.J.
750.
—771 Foll. I.L.R. 1938 Nag.
248.
—780 Ref. I.L.R. 1938 All.
922.
—828 Ref. I.L.R. 1938 All.
922
- 3 All. 12 Dist. I.L.R. 1938 Nag.
402.
—24 Ref. 19 P.L.T. 489.
—168 Ref. 40 P.L.R. 720
—435 Ref. 40 P.L.R. 319.
—598 Foll 1938 Rang.L.R.
236.
—787 Foll. 17 Pat. 308.
- 5 All. 88 (F.B.) Ref. I.L.R. 1938
Lab. 582.
—215 Foll 1938 Rang L.R.
236.
—293 Appr. I.L.R. 1938 All.
805; Ref. 1938 A.L.J. 813.
—577 Ref. I.L.R. 1938 All.
922; 19 P.L.T. 80; Rel. I.L.
R. (1938) 1 Cal. 512.
- 6 All. 1 Ref. 19 P.L.T. 202.
—67 Ref. 42 C.W.N. 967.
—250 Ref. 40 P.L.R. 712.
—262 Ref. 1938=2 M.L.J.
44.
—269 Ref. I.L.R. 1938 All.
922.
—366 Foll. I.L.R. 1938 All.
342.
—438 Ref. 19 Pat L.T. 243.
7 All. 42 Ref. 17 Pat. 245=19
Pat.L.T. 243.
—102 Ref. I.L.R. 1938 All.
922.
—178 Ref. 40 P.L.R. 319.
—362 Disc. 19 P.L.T. 511
—523 Dist. 1938 O.W.N. 480.
—661 Ref. 13 Luck 560.
—720 Ref. 40 P.L.R. 777.
—775 Ref. 40 P.L.R. 319.
- 7 All. 822 Disc. 65 I.A. 219 Dist.
1938 A.L.J. 235, I.L.R. 1938
All. 167, Ref. 65 I.A. 119
I.L.R. 1938 All. 314, 1938
A.L.J. 141, 843, 40 Bom.L.
R. 735; 843; 43 C.W.N.
353, 13 Luck. 494, 689
(1938) 1 M.L.J. 438, (1938)
2 M.L.J. 210; 1938 O.W.N.
581; 19 P.L.T. 215.
—844 Ref. 42 C.W.N. 901.
- 8 All. 64 Dist. 1938 A.L.J. 544.
—111 Foll. I.L.R. (1938) All.
40.
—146 (F.B.) Ref. 1938 A.L.J.
141.
—149 (F.B.) Appr. 40 Bom.
L.R. 735= (1938) 1 M.L.J.
458 (P.C.) Ref. 65 I.A. 119
I.L.R. 1938 All. 314.
—178 Dist. I.L.R. 1938 Lab.
502.
- 9 All. 134 Ref. 1938 Rang.L.R.
121.
—168 Ref. 40 P.L.R. 498, Ref.
I.L.R. 1938 All. 146.
—240 (F.B.) Overr. I.L.R.
1938 All. 750, 1938 A.L.J.
565, 1938 O.W.N. 591.
—420 Dist. I.L.R. 1938 All.
157.
—625 Ref. 19 P.L.T. 675.
- 10 All. 289 Ref. 42 C.W.N. 272.
—535 Foll. 40 Bom.L.R. 132.
- 12 All. 1 Ref. I.L.R. 1938 Lab.
494.
—115 Rel. I.L.R. (1938) 1
Cal. 581=42 C.W.N. 50.
—129 Foll. I.L.R. 1938 All.
110.
—213 Ref. 40 P.L.R. 64, Rel.
I.L.R. 1938 Lab 318
—399 Foll. I.L.R. 1938 All.
342, Ref. I.L.R. 1938 Lab.
586; 40 P.L.R. 494, Rel.
1938 A.L.J. 117.
—461 Ref. I.L.R. 1938 All.
209, 42 C.W.N. 72.
—595 Ref. I.L.R. 1938 All.
875=1938 A.L.J. 943.
- 13 All. 28 Ref. & Rel. 13 Luck.
101.
—89 Ref. I.L.R. 1938 All.
904.
—277 Ref. 1938 A.L.J. 742.
- 14 All. 1 (F.B.) Ref. 40 P.L.R.
546, Rel. I.L.R. 1938 Lab.
103.
—185 (F.B.) Appr. I.L.R.
1938 All. 538, Ref. 1938 A.
L.J. 436.
- 15 All. 134 Ref. I.L.R. 1938 All.
904.
—321 Diss. I.L.R. 1938 M.
148.
—367 Ref. I.L.R. 1938 Nag.
106.

- 16 All 11 Disappr. I.L.R. 1939
All 513, Disc. 1938 A.L.J.
313 Ref. 1938 O.W.N. 433.
— 134 Foll. 1938 Rang L.R.
236.
— 136 Ref. 19 P.L.T. 675.
— 179 Dist. I.L.R. 1938 All
515, Ref. 1938 A.L.J. 495
— 286 Ref. 40 Bom L.R. 512.
— 318 (T.B.) Dist. I.L.R. 1938
All 218, Ref. 1938 A.L.J.
18.
— 325 Foll. (1938) 1 M.L.J.
417.
- 17 All 106 Ref. 13 Luck. 309.
— 198 (P.O.) Disc. 1938 A.L.J.
252, Foll. 1938 Rang L.
R. 35 Ref. I.L.R. 1938 All.
363, 1938 O.W.N. 318.
— 498 Dist. I.L.R. 1938 Nag.
186.
- 18 All 46 Ref. (1938) 1 M.L.J.
368.
— 92 Ref. 1938 A.L.J. 449.
— 325 Ref. 40 P.L.R. 319.
— 471 Ref. 1938 A.L.J. 834.
- 19 All 60 Ref. I.L.R. (1938) 2
Cal. 411, 42 C.W.N. 667.
— 101 Dist. I.L.R. 1938 Bom.
362 = 40 Bom L.R. 365.
— 235 Ref. 13 Luck. 689.
— 300 Ref. 1938 A.L.J. 834.
— 307 Diss. I.L.R. (1938) 2
Cal. 320.
— 342 Foll. 40 Bom L.R. 389.
— 428 Ref. (1938) 2 M.L.J.
623.
— 477 Appl. I.L.R. 1938 All.
342 = 1938 A.L.J. 117.
- 20 All 35 Ref. & Ref. 13 Luck.
143.
— 100 Ref. 40 P.L.R. 97.
— 129 Ref. 1938 A.L.J. 553
— 234 Dist. 42 C.W.N. 1038,
— 258 Ref. 13 Luck. 76.
— 267 Ref. 19 P.L.T. 675.
— 299 Ref. 13 Luck. 560.
— 459 Ref. 19 P.L.T. 504.
— 512 Foll. 1938 Rang L.R. 6.
— 523 (F.B.) Disc. I.L.R.
1938 Lab. 148, Ref. 40 P.L.
R. 640.
- 21 All 4 Diss. 1938 O.W.N. 642;
Dist. I.L.R. 1938 All 714.
— 89 Ref. I.L.R. 1938 Nag.
255.
— 181 Expl. (1938) 2 M.L.J.
100.
— 183 Foll. I.L.R. 1938 Nag.
289
— 223 (P.O.) Ref. I.L.R. 1938
Nag. 206.
— 281 Ref. I.L.R. 1938 All.
125, 1938 A.L.J. 23.
— 311 Ref. I.L.R. 1938 Lab.
582
— 374 Ref. 40 P.L.R. 97.
— 425 (F.B.) Foll. 40 Bom L.
R. 324, Ref. I.L.R. 1938
Bom 655.
- 21 All 486 Ref. 1938 O.W.N. 171,
19 P.L.T. 553.
512 = 19 P.L.T. 297
— All 1 Ref. I.L.R. 1938 All.
623 = 1938 A.L.J. 534.
— 49 Dist. I.L.R. 1938 Nag.
186.
— 243 Ref. 40 Bom L.R. 512.
— 270 Ref. 1938 O.W.N. 513.
— 284 (F.B.) Ref. 13 Luck.
122
— All 106 Ref. I.L.R. 1938 Bom.
98.
— 130 Foll. 40 Bom L.R. 895
— 175 Foll. 42 C.W.N. 1059,
Ref. I.L.R. 1938 All. 556.
— 206 Ref. 40 Bom L.R. 381
— 211 Ref. I.L.R. 1938 All.
396.
— 247 Ref. 40 P.L.R. 97.
— 291 Appr. 1938 A.L.J. 786.
(1938) 2 M.L.J. 596, 1938
O.W.N. 606; Ref. 13 Luck
508.
— 364 Ref. 1938 O.W.N. 561.
- 24 All 94 (P.O.) Ref. I.L.R. 1938
Mad. 688.
— 172 Ref. 42 C.W.N. 1164.
— 363 Ref. 32 S.L.R. 1.
25 All 38 Foll. I.L.R. 1938 Nag.
308.
— 59 Foll. I.L.R. 1938 All. 614
1938 A.L.J. 521.
— 175 Ref. 1938 A.L.J. 513.
— 179 Ref. 42 C.W.N. 1177.
— 187 Ref. I.L.R. 1938 Mad.
873.
— 195 Appl. 42 C.W.N. 293.
— 315 Diss. 1938 Rang L.R.
163.
— 407 Foll. I.L.R. 1938 Nag.
1.
- 26 All 162 Ref. (1938) 2 M.L.J.
44.
— 220 Ref. 32 S.L.R. 567.
— 291 Ref. I.L.R. 1938 All.
767 = 1938 A.L.J. 617.
— 509 Ref. 42 C.W.N. 31.
— 672 Ref. 40 P.L.R. J. & K.
31.
27 All 271 (P.O.) Ref. I.L.R.
1938 Lab. 173.
— 305 Ref. 40 P.L.R. 777.
— 361 Foll. (1938) 1 M.L.J.
526.
— 622 Foll. (1938) 2 M.L.J.
402.
— 634 = 9 O.W.N. 1009 Ref.
42 C.W.N. 81.
— 702 Ref. 1938 O.W.N. 758.
- 28 All 30 Foll. 17 Pat. 460; Ref.
19 P.L.T. 594.
— 109 Ref. 13 Luck. 20.
— 167 Appr. I.L.R. 1938 All.
714, 1938 O.W.N. 642, Foll
1938 A.L.J. 746.
— 174 Foll. 13 Luck. 35.
— 238 Ref. I.L.R. 1938 Lab.
97 = 40 P.L.R. 509.
- 28 All 633 Appr. 42 C.W.N. 845
Disappr. 40 Bom L.R. 835, I.
L.R. 1938 Lab. 383, (1938)
2 M.L.J. 1 Diss. 65 I.A.
198, Overr. in part 1938 A.
L.J. 825
— 651 Ref. 42 C.W.N. 286.
— 700 Dist. I.L.R. 13 Luck.
122.
29 All 165 Dist. 40 P.L.R. 33.
— 163 Foll. I.L.R. 1938 All.
63
— 244 Foll. I.L.R. 1938 Nag.
233.
— 284 Ref. 1938 Rang L.R.
102.
— 301 Ref. 40 Bom L.R. 411.
— 331 Ref. 40 P.L.R. 556
— 672 (F.B.) Ref. 32 S.L.R.
215.
— 679 Ref. 42 C.W.N. 721.
- 30 All 1 (P.O.) Expl. I.L.R. 1938
Mad. 688.
— 137 Ref. I.L.R. 1938 All.
389 = 1938 A.L.J. 210.
— 146 Ref. 1938 A.L.J. 379 =
I.L.R. 1938 All. 466.
— 178 Foll. 1938 O.W.N. 642.
— 331 Ref. 13 Luck. 18.
— 388 Foll. 1938 Rang L.R. 6
— 384 Ref. I.L.R. 1938 All.
904, Expl. 1938 A.L.J. 834.
— 400 Foll. 1938 Rang L.R.
35
— 489 Ref. 42 C.W.N. 286
- 31 All 13 Cons. 1938 Rang L.R.
293.
— 51 Ref. I.L.R. 1938 All. 563
— 56 Ref. 42 C.W.N. 1058.
— 156 Dist. 40 Bom L.R. 1029
— 176 (F.B.) Ref. I.L.R. 1938
Nag. 136.
— 293 Ref. 40 P.L.R. 226.
— 352 Ref. I.L.R. (1938) 1
Cal. 21.
— 551 (P.O.) Ref. I.L.R. 1938
Lab. 571.
— 572 Ref. 3 I.C. 864 Ref. 40
P.L.R. 857
— 583 (P.O.) Ref. I.L.R. 1938
All 500 = 1938 A.L.J. 455.
— 610 Ref. 40 P.L.R. J. & K.
31
— 621 Ref. 40 P.L.R. 319.
- 32 All 3 Ref. 1938 A.L.J. 500.
— 11 = 6 A.L.J. 921 Appr. I.
L.R. 1938 All. 741; Ref.
1938 A.L.J. 773.
— 314 Ref. I.L.R. 1938 All.
563.
— 410 Dist. 40 Bom L.R. 152;
Ref. I.L.R. 1938 All. 283;
I.L.R. 1938 Nag. 54
— 415 (P.O.) Expl. 17 Pat. 430
Ref. 19 Pat.L.T. 281.
— 623 Disc. 1938 O.W.N. 561
Not Foll. 19 P.L.T. 101.

- 33 All 101 Dist. I.L.R. 1938 Lah.
155.
— 182 Ref. 19 P.L.T. 215.
— 272 = 15 C.W.N. 321 (P.C.)
Ref. 42 C.W.N. 316.
— 283 Ref. 40 Bom.L.R. 1029.
— 306 = 8 A.L.J. 92 Dist.
1938 A.L.J. 654.
— 356 Ref. 1938 O.W.N. 226.
— 453 Dist. I.L.R. 1938 All.
184
— 472 Dist. I.L.R. 1938 All.
829 = 1938 A.L.J. 919, Ref.
1938 A.L.J. 952.
— 578 Ref. I.L.R. (1938) 2
Cal 357.
— 647 Ref. 1938 A.L.J. 864,
Ref. 13 Luck. 18
— 677 Foll. I.L.R. 1938 Nag.
233, Ref. (1938) 1 M.L.J.
216 = I.L.R. 1938 Mad 696.
- 34 All. 1 Ref. 42 C.W.N. 300.
— 4 Dist. I.L.R. 1938 All
829 = 1938 A.L.J. 919.
— 63 (P.C.) Foll. I.L.R. 1938
Nag. 268.
— 118 Ref. I.L.R. (1938) 2
Cal 357.
— 234 Foll. I.L.R. 1938 Nag.
255
— 296 Ref. I.L.R. 1938 All.
167.
— 354 Diss 1938 Rang.L.R.
163
— 429 Dist. & Disappr. I.L.R.
1938 All 500; Ref. 1938
A.L.J. 455.
— 451 Ref. I.L.R. (1938) 2
Cal 357.
— 468 Ref. 46 Bom.L.R. 1041;
42 C.W.N. 345
— 545 Ref. I.L.R. 1938 All.
396 = 1938 A.L.J. 400
— 549 Foll. I.L.R. 1938 All.
425, 1938 A.L.J. 56.
- 35 All 105 Ref. I.L.R. 1938 All.
814.
— 211 Ref. 1938 Rang.L.R.
256.
— 419 Ref. 13 Luck 138.
— 448 Diss. 1938 Rang.L.R.
72
— 487 (P.C.) Ref. 40 P.L.R.
403.
— 512 Rel. 13 Luck 199.
— 582 = 11 A.L.J. 950 (F.B.)
Rel. 1938 A.L.J. 673.
- 36 All 46 Dist. I.L.R. (1938) 1
Cal 531 = 42 C.W.N. 422.
— 65 Foll. I.L.R. (1938) 1 Cal
245.
— 93 Appr. 40 P.L.R. 4.
— 201 Foll. 40 P.L.R. 429.
— 259 Rel. I.L.R. 1938 All.
741.
— 350 Dist. 19 P.L.T. 424.
— 354 Disappr. I.L.R. 1938
All. 805; Ref. 1938 A.L.J.
813.
- 36 All 476 = A.I.R. 1914 All 271
Dist. 40 P.L.R. 794.
— 478 Foll. 40 P.L.R. 709.
— 492 Dist. 13 Luck. 143.
— 500 = 12 A.L.J. 844 Ref. I.
L.R. 1938 All. 686 = 1938
A.L.J. 708.
— 560 Dist. 1938 Rang.L.R.
521.
- 37 All 26 Ref. 40 P.L.R. 492.
— 107 = A.I.R. 1915 All 114
(2) Ref. 40 P.L.R. 501.
— 129 Ref. I.L.R. 1938 All.
623, 1938 A.L.J. 534.
— 272 Ref. 13 Luck. 20.
— 292 Ref. 1938 Rang.L.R.
468
— 496 = 11 A.L.J. 594 Ref. I.
L.R. 1938 A.L.J. 715; 1938
All. 761.
— 515 Ref. 40 P.L.R. 64; Rel.
I.L.R. (1938) Lab. 318.
— 600 Rel. 32 S.L.R. 567.
— 604 Ref. I.L.R. 1938 Nag.
115; Rel. I.L.R. 1938 Nag
255.
— 649 Disappr. I.L.R. 1938
Nag. 344.
— 658 Ref. I.L.R. 1938 All.
563.
- 38 All 1 Foll. I.L.R. 1938 Mad.
523.
— 197 Ref. I.L.R. 1938 All.
563.
— 302 Appr. 1938 A.L.J. 786;
(1938) 2 M.L.J. 596; Ref.
13 Luck. 508.
— 425 Ref. 1938 A.L.J. 742.
— 488 Ref. 1938 A.L.J. 235.
— 517 = A.L.R. 1916 All 152
Ref. 40 P.L.R. 806
— 581 Dist. I.L.R. 1938 All.
243.
— 676 = A.I.R. 1916 All 338
Ref. 40 P.L.R. 685.
- 39 All 178 Appl. I.L.R. 1938 All.
714.
— 196 Ref. 1938 Rang.L.R.
542.
— 322 = A.I.R. 1917 All 276
Ref. 40 P.L.R. 685.
— 431 Ref. I.L.R. 1938 Nag.
136.
— 469 (F.B.) Appr. 1938 A.L.
J. 786, (1938) 2 M.L.J. 596,
1938 O.W.N. 606; Ref. 13
Luck. 508.
— 498 Expl. 17 Pat 430, Ref.
19 P.L.T. 281.
— 707 Rel. 13 Luck. 303.
- 40 All 89 Ref. 42 C.W.N. 391;
Rel. I.L.R. (1938) 2 Cal.
103.
— 109 Disc. I.L.R. (1938) Lab.
148; Dist. 1938 Rang.L.R.
56; Ref. 40 P.L.R. 640.
— 142 Disc. I.L.R. (1938) Lab.
341; Foll. 40 P.L.R. 196.
- 40 All 147 Dist. I.L.R. 1938 Lah.
417; Ref. 40 P.L.R. 235.
— 187 Ref. I.L.R. (1938) 1
Cal. 607 = 42 C.W.N. 38.
— 221 Ref. 45 P.L.R. 806.
— 292 Appr. I.L.R. 1938 Bom.
655 = 40 Bom.L.R. 324.
— 407 Disc. 19 P.L.T. 227.
— 517 Ref. I.L.R. 1938 All.
422.
— 584 Ref. 1938 A.L.J. 235.
— 593 (P.C.) Ref. I.L.R. 1938
All. 761 = 1938 A.L.J. 715.
— 612 Rel. 1938 A.L.J. 652.
— 648 Ref. I.L.R. 1938 All.
673; Rel. 1938 A.L.J. 558.
- 41 All 111 Ref. 42 C.W.N. 18.
— 324 Ref. 40 P.L.R. 54.
— 361 Foll. 40 Bom.L.R. 202
— 366 Disappr. I.L.R. 1938
All. 422.
— 417 Ref. 42 C.W.N. 812.
— 609 Dist. 13 Luck. 143
— 611 Ref. 1938 O.W.N. 711.
— 658 Rel. 32 S.L.R. 106
— 689 Diss. (1938) 1 M.L.J.
113.
- 42 All 148 Ref. (1938) 1 M.L.J.
670.
— 158 (P.C.) Ref. 40 P.L.R.
289 = Rel. I.L.R. 1938 Lah.
140; I.L.R. 1938 Nag. 354.
— 191 Ref. 1938 A.L.J. 544
— 227 Foll. I.L.R. 1938 Nag.
174.
— 314 Disc. 19 P.L.T. 461
— 364 Disc. 19 P.L.T. 227.
— 519 Ref. I.L.R. 1938 All.
148.
— 593 Ref. 13 Luck. 174.
- 43 All 60 Ref. I.L.R. (1938) 1
Cal. 512.
— 152 Ref. 13 Luck. 353.
— 374 (F.B.) Appl. I.L.R.
1938 Lab 271, Reviewed, 40
P.L.R. 153
— 383 Ref. 42 C.W.N. 286.
— 418 Ref. I.L.R. 1938 All.
556; 1938 A.L.J. 513.
— 469 Disc. 19 P.L.T. 227.
— 564 = 19 A.L.J. 558 (F.B.)
Ref. 1938 A.L.J. 813, Appl.
43 All. 564; 19 A.L.J. 558,
I.L.R. 1938 All. 805; Dist.
I.L.R. 1938 All. 22.
— 606 Ref. I.L.R. 1938 All.
396
— 617 Dist. I.L.R. 1938 All.
35
— 688 Ref. (1938) 1 M.L.J. 17.
- 44 All 18 Ref. 40 P.L.R. 591.
— 61 = A.I.R. 1922 All. 155
Foll. 40 P.L.R. 305
— 248 Not Foll. 13 Luck. 560.
— 258 Expl. 1938 Rang.L.R.
385.
— 265 Rel. I.L.R. 1938 All.
348; 1938 A.L.J. 102.
— 327 Ref. I.L.R. 1938 All.
563.

- 44 All 360 Ref. 1938 Rang.L.R. 243
 — 514 Ref. I.L.R. 1938 Nag 364
 — 523 Rel. 1938 A.L.J. 544
 — 634 Dist. I.L.R. 1938 All 454.
 — 656 (F.B.) Reviewed 17 Pat. 507-19 P.L.T. 309
 — 743 Ref. 13 Luck 353
- 45 All 27 (F.B.) Dist 42 C.W.N. 545.
 — 9 Ref. 1938 Rang.L.R. 256
 — 70 Dist 42 C.W.N. 1038
 — 95 Expl & Rel. I.L.R. 1938 Nag 136.
 — 99 Foll 40 P.L.R. 469
 — 179 Ref. 13 Luck 531
 — 369 Dist I.L.R. 1938 All.
 — 922, Not Foll. 19 P.L.T. 80
 — 388 Ref. I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
 — 669 Disappr. I.L.R. 1938 All 814
 — 715 Ref. 42 C.W.N. 359
- 46 All 95 51 I.A. 129 (P.O.) Foll. 17 Pat. 168; Ref. 1938 A.L.J. 644.
 — 250 Rel. (1938) 1 M.L.J. 193.
 — 328 Dist. I.L.R. 1938 All. 337=1938 A.L.J. 121.
 — 333 Dist. 13 Luck. 662.
 — 458 Dist. 13 Luck. 463, Ref. 19 P.L.T. 485
 — 509 If good law. I.L.R. (1938) 2 Cal. 368
 — 638 Dist 13 Luck. 246.
 — 617 Dist. I.L.R. 1938 All 829.
 — 651 Ref. 40 P.L.R. 319.
 — 754 Ref. I.L.H. 1938 All. 125.
 — 847 Dist. I.L.R. (1938) 2 Cal. 266; Ref. 42 C.W.N. 38, 42 C.W.N. 701; I.L.R. (1938) 1 Cal. 607.
 — 860 Rel. I.L.R. 1938 Nag 54
 — 917 Ref. I.L.R. 1938 All 904.
- 47 All 17 Foll. 13 Luck. 344.
 — 98 Foll. 1938 Rang.L.R. 645
 — 114 Disc. 19 P.L.T. 665.
 — 121 App. I.L.R. 1938 All. 805; Ref. 1938 A.L.J. 813.
 — 122 Rel. I.L.R. 1938 Nag. 136.
 — 291 Diss 32 S.L.R. 67, Rel. 32 S.L.R. 106
 — 353 Foll. I.L.R. 1938 Bom. 58.
 — 361 Ref. I.L.R. 1938 Nag. 151
 — 385 Dist. I.L.R. 1938 All. 35; Ref. 40 P.L.R. 303.
 — 409 Foll I.L.R. 1938 Nag. 248.
 — 430 Rel. 13 Luck. 450.
- 47 All 490 Ref. I.L.R. 1938 All. 761
 — 541 Ref. 13 Luck. 442
 — 756 Not Foll. (1938) 1 M.L.J. 628 (F.B.). Ref. I.L.R. 1938 M.L.J. 504
 — 878 Rel. 13 Luck. 246.
 — 883 Ref. 40 P.L.R. 591
 — 916 Appr. I.L.R. 1938 All 805.
- 48 All 81 Dist. I.L.R. 1938 All. 350.
 — 150 Ref. I.L.R. 1938 All. 63
 — 152 Ref. 40 P.L.H. 188.
 — 175=24 A.L.J. 66 Ref. 1, I.L.R. 1938 All. 805=1938 A.L.J. 813
 — 251 Not Foll. I.L.R. 1938 Nag 370.
 — 264 Disc. 1938 Rang.L.R. 104
 — 375 Ref. 19 P.L.T. 161.
 — 395 If good law. I.L.R. (1938) 2 Cal. 368.
 — 425 Dist. 1938 Rang.L.R. 56; Ref. 40 P.L.R. 640.
 — 493 Disc. 1938 O.W.N. 561.
 — 510 Ref. 17 Pat. 87; 19 P. 1.T. 572.
 — 580 Ref. 32 S.L.R. 167.
- 49 All 67 Dist. 1938 A.L.J. 252; Ref. I.L.R. 1938 All. 363; 1938 O.W.N. 318
 — 92 Ref. I.L.R. (1938) 1 Cal. 645=42 C.W.N. 1121.
 — 240 Ref. I.L.H. (1938) 2 Cal. 221.
 — 367 (P.O.) Ref. 40 P.L.R. 206.
 — 388 Ref. (1938) 1 M.L.J. 369.
 — 405 Ref. 13 Luck. 680
 — 557 Doubt. 1938 A.L.J. 141. Ref. 40 Bom.L.R. 735; I.L.R. 1938 All 314; 42 C.W.N. 553; (1938) 1 M.L.J. 458; 19 P.L.T. 215.
 — 603 Dist. 19 P.L.T. 198; Ref. 17 Pat. 338.
 — 701 Dist. 13 Luck. 279.
 — 726=1927 A.L.J. 689 Disc. 1938 A.L.J. 252, Ref. 1938 O.W.N. 318.
 — 727 Disappr. I.L.R. 1938 All. 363.
 — 773 Ref. 40 P.L.R. 64, Rel. I.L.R. 1938 Lah. 318.
 — 50 All. 1 Ref. 1938 A.L.J. 644; (1938) 2 M.L.J. 256
 — 130 Ref. I.L.R. 1938 All. 441.
 — 145 Ref. I.L.R. 1938 Nag. 353
 — 188 Dist. & Disc. I.L.R. 1938 All. 681; Ref. 1938 A.L.J. 531.
 — 209 Foll. 40 Bom.L.R. 512.
 — 218 Dist I.L.R. 1938 Lah. 155; Foll 1938 A.L.J. 521, Ref. I.L.R. 1938 All. 614.
- 50 All 321 Diss. I.L.R. 1938 All. 148, Ref. 13 Luck 129
 — 342 Disc. & Not Foll. I.L.R. 1938 All. 143
 — 354 Dist. I.L.R. 13 Luck. 279.
 — 394 Ref. 1938 Rang.L.R. 542
 — 543 (F.B.) Appr. 40 Bom.L.R. 317; Ref. 1 I.L.R. 1938 Hm. 357.
 — 625 Ref. I.L.R. 1938 All. 483=1938 A.L.J. 282.
 — 655 Expl. I.L.R. 1938 All. 757=1938 A.L.J. 617.
 — 722 (P.O.) Foll. I.L.R. 1938 Nag. 157; Ref. 32 S.L.R. 18.
 — 776 Not Foll. 17 Pat. 386
 — 810 Not Foll. 13 Luck. 369.
 — 909 (F.B.) Foll. 42 C.W.N. 528; Ref. I.L.R. (1938) 2 Cal. 221.
 — 965 Ref. I.L.R. 1938 All 563.
 — 969 (F.B.) Foll. 17 Pat. 356; Ref. 17 Pat. 168; 40 P.L.R. 678.
 — 980 Dist. 13 Luck. 397.
- 51 All 79 Appl 1938 O.W.N. 226, Foll. I.L.R. 1938 All. 125; Ref. I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
 — 136 Foll. 40 Bom.L.R. 946, Ref. I.L.R. 1938 Nag. 136.
 — 237 Dist. 13 Luck. 340; Ref. 42 C.W.N. 437; I.L.R. 1938 All. 342, 1938 O.W.N. 360.
 — 267 Foll. I.L.R. 1938 Nag. 370
 — 285 Dist. I.L.R. 1938 All. 441.
 — 314 Ref. I.L.R. (1938) 2 Cal. 287=42 C.W.N. 586.
 — 346 Dist. I.L.R. 1938 Lah. 140; Rel. I.L.R. 1938 Nag. 354.
 — 527 Appr. I.L.R. 1938 All. 337; Disc. 17 Pat. 191.
 — 630 Appr. (1938) 2 M.L.J. 189.
 — 550 (F.B.) Rel. I.L.R. 1938 Lah. 439.
 — 612 Foll. 13 Luck. 35.
 — 621 Ref. & Rel. 40 P.L.R. 319.
 — 651 Rel. I.L.R. 1938 Nag. 45
 — 676 Ref. I.L.R. 1938 All. 556, Rel. 1938 A.L.J. 513.
 — 920 Ref. 42 C.W.N. 1106
 — 981 Dist. 13 Luck. 279.
 — 1010 Disappr. I.L.R. 1938 All. 805.
- 52 All 139 Ref. 1938 O.W.N. 489.
 — 332 Foll. I.L.R. 1938 A 904

- 52 All. 235 Dist. (1938) 1 M.L.J. 368
 —328 Dist. I L.R. 1938 Lah. 289.
 —363 Foll. 1938 Rang.L.R. 35, Ref. I.L.R. 1938 All. 148, I.L.R. 1938 Lah. 148= 40 P.L.R. 640
 —406 Rel. (1938) 2 M.L.J. 523
 —459 Foll. 42 C.W.N. 548; Ref. I.L.R. (1938) 2 Cal 320.
 —501 Rel. I L.R. 1938 All. 462.
 —553 Expl. I.L.R. 1938 All. 89; Not Appr. (1938) 1 M. L.J. 344.
 —688 Rel. I L.R. 1938 Lab. 511
 —781 Ref. I L.R. 1938 All. 58.
 —844 (F.B.) Foll. I.L.R. 1938 Mad 460=(1938) 1 M.L.J. 159
 —886 Rel. I L.R. 1938 Lah. 221.
 —927 Cons 40 P.L.R. 69; Foll. 13 Luck. 560; Not Foll. 13 P.L.T. 101.
 —954 Ref. (1938) 1 M.L.J. 574.
 —1005 Diss 42 C.W.N. 300.
 —1011 Dist. 17 Pat. 15; Not foll. 19 P.L.T. 476; Ref. 40 P.L.R. 265.
 53 All 75 Ref. I.L.R. 1938 All 754.
 —103 Dist. 40 P.L.R. 600; Foll. I.L.R. 1938 Lah. 75; Ref. 19 P.L.T. 645.
 —114 Ref. 17 Pat. 268=19 P.L.T. 579, I.L.R. 1938 All 741.
 —180 Rel. I.L.R. 1938 Nag 221.
 —239 (F.B.) Rel. I L.R. 1938 Nag. 10.
 —416 Foll. 17 Pat. 9.
 —484 Ref. (1938) 2 M.L.J. 165.
 —496 Ref. I L.R. 1938 All. 922
 —568 Overr. 1938 A.L.J. 786, (1938) 2 M.L.J. 596; Ref. 13 Luck. 508=1938 O.W. N. 606
 —612 Ref. I.L.R. 1938 All. 805=1938 A.L.J. 813.
 —673 Dist. (1938) 1 M.L.J. 368.
 —778 Ref. 1938 A.L.J. 813= I.L.R. 1938 All 805.
 —868 Rel. I.L.R. 1938 Nag. 10; I.L.R. 1938 Nag 136.
 —951 Ref. (1938) 1 M.L.J. 320.
 —1006 Ref. 1938 A.L.J. 813=I.L.R. 1938 All. 805.

- 54 All. 6 Ref. 13 Luck. 35.
 —55 Ref. I.L.R. 1938 All. 681
 —57 Rel. I L.R. 1938 All. 22, I.L.R. (1938) 1 Cal. 531= 42 C.W.N. 422.
 —189 (P.C.) Foll. I.L.R. 1938 Lah. 93
 —280 Appr. I L.R. 1938 Mad 275=1938) 1 M.L.J. 54.
 —293 Appr. 42 C.W.N. 1058.
 —350 Expl. I L.R. 1938 All. 875.
 —363 Rel. 42 C.W.N. 1258.
 —394=A.I.E. 1933 All. 1 Ref. 13 Luck 31
 —411 Ref. 40 P.L.R. 12.
 —448 Foll. (1938) 2 M.L.J. 156
 —525 Ref. 13 Luck. 560
 —534 Rel. 13 Luck. 697.
 —563=34 Bom.L.R. 1079 (P.C.) Cons 40 P.L.R. 678, Expl. 40 Bom.L.R. 381; 17 Pat 386.
 —573 Ref. I L.R. 1938 Lah. 470
 —698 Ref. 1938 A.L.J. 670.
 —738 Foll. I L.R. 1938 All. 441.
 —806 Ref. I L.R. 1938 All 314=1938 A.L.J. 141; 40 Bom.L.R. 735; 42 C.W.N. 353, (1938) 1 M.L.J. 458; 17 Pat. 303=19 P.L.T. 215.
 —812 Ref. I.L.R. 1938 All 470.
 —846 Foll. & Expl. I.L.R. 1938 All. 100, 40 Bom.L.R. 995.
 —858 Not Foll. (1938) 1 M.L.J. 728.
 —869 Dist. I L.R. (1938) 2 Cal. 411=42 C.W.N. 667.
 —879 Ref. I.L.R. 1938 All. 114
 —897 (F.B.) Disappr. I.L.R. 1938 Nag 206, Diss. 1938 Rang.L.R. 430; Foll. 40 Bom.L.R. 1001.
 —916 Ref. 13 Luck. 219.
 —948 Appr. I L.R. 1938 All. 922, Disc. 19 P.L.T. 111.
 —1036 Ref. 40 P.L.R. 579.
 55 All 68 Ref. I L.R. (1938) 1 Cal. 290=42 C.W.N. 129.
 —164 Ref. I.L.R. 1938 All. 243.
 —221 Disc. 19 P.L.T. 111; Ref. I L.R. 1938 All. 922, 19 P.L.T. 119
 —241 Foll. 1938 O.W.N. 377.
 —246 Dist. I L.R. 1938 Nag. 186.
 —274 Dist. I.L.R. 1938 All. 470, Rel. I.L.R. 1938 Nag. 106.
 —283 Dist. I L.R. 1938 Nag 10; I.L.R. 1938 Nag. 136

- 55 All 432 Ref. 40 P.L.R. 712.
 —512 Ref. I.L.R. 1938 All. 206.
 —664 Rel. I.L.R. (1938) 1 Cal. 531=42 C.W.N. 422.
 —672 Ref. I L.R. 1938 All. 396.
 —725 (F.B.) Not Foll. I.L.R. 1938 Nag. 115.
 —791 Disc. I L.R. 1938 All. 470.
 —1002 Foll. I.L.R. 1938 All. 823.
 56 All 111 Ref. 40 P.L.R. 319.
 —802 Foll. I.L.R. 1938 All 875.
 —376 Disc. & Dist. I.L.R. 1938 All. 741, Ref. 1938 A. L.J. 773.
 —401 Reversed. 65 I.A. 119
 —468 (P.C.) Ref. I.L.R. 1938 All. 125, I.L.R. 1938 Lah. 47.
 —504 Foll. I.L.R. 1938 All 638=1938 A.L.J. 604.
 —548 Dist. I.L.R. 1938 All. 829, Ref. I.L.R. 1938 All. 330=1938 A.L.J. 268.
 —702 Dist. I L.R. 1938 Nag. 186.
 —768 Disc. I.L.R. 1938 All 500.
 —828 Reversed 65 I.A. 182
 —885 Ref. I.L.R. 1938 All. 823.
 —895 Foll. 1938 Rang.L.R. 651.
 —921 Ref. I.L.R. 1938 All. 342; 1938 O.W.N. 360
 —1008 Ref. I.L.R. 1938 Lah. 47.
 57 All. 1 Ref. I L.R. 1938 All. 658
 —17 Ref. I L.R. 1938 All 805.
 —26 (F.B.) Ref. I L.R. 1938 Lah. 571.
 —85 Rel. I L.R. 1938 Nag. 255.
 —159 Ref. 40 P.L.R. 319
 —242 (P.C.) Appl. I.L.R. 1938 All. 861; I.L.R. 1938 Mad. 439, Foll. I.L.R. 1938 Lah. 193=40 P.L.R. 533 (F.B.).
 —278 (F.B.) Ref. (1938) 1 M.L.J. 113.
 —357 Ref. I L.R. 1938 Nag. 136.
 —434 Foll. 40 Bom.L.R. 1010.
 —440 Ref. 13 Luck. 31.
 —605 (F.B.) Foll. 17 Pat. 386, 40 P.L.R. 678.
 —638 Appr. I.L.R. 1938 All. 470
 —658 Foll. (1938) 2 M.L.J. 833, Ref. 40 P.L.R. 509, Rel. I.L.R. 1938 Lah. 97.
 —690 Ref. I.L.R. 1938 All. 922.

- 57 All. 740 Disapp. I.L.R. 1938 All. 691.
 — 755 Diss. I.L.R. (1938) 2 Cal. 287.
 — 785 Diss. 42 C.W.N. 566.
 — 852 Appr. I.L.R. 1938 All. 462.
 — 854 Appr. I.L.R. 1938 All. 462.
 — 949 Ref. I.L.R. 1938 All. 412.
- 58 All. 40 Diss. & Dist. & Foll. I.L.R. 1938 All. 252.
 — 63 (F.B.) Rel. I.L.R. 1938 Lab. 221.
 — 85 Diss. I.L.R. (1938) 2 Cal. 247 = 42 C.W.N. 581.
 — 98 Foll. I.L.R. 1938 All. 349.
 — 146 Diss. I.L.R. 1938 All. 470.
 — 191 Ref. I.L.R. 1938 All. 11.
 — 200 Ref. I.L.R. 1938 All. 10.
 — 281 (F.B.) Foll. 40 Bom. L. 568, Ref. (1938) 1 M.L.J. 620.
 — 413 Diss. & Overr. I.L.R. 1938 All. 503 (F.B.).
 — 495 Ref. (1938) 2 M.L.J. 44, 1938 Rang. L.R. 371.
 — 569 Appl. I.L.R. 1938 All. 823.
 — 644 Diss. 1938 Rang. L.R. 1.
 — 946 Appr. I.L.R. 1938 All. 805.
 — 949 (F.B.) Dist. 42 C.W.N. 266; Ref. I.L.R. 1938 All. 35.
 — 1041 Ref. I.L.R. (1938) All. 563.
- I.L.R. 1937 All. 10 Ref. I.L.R. (1938) 1 Cal. 607.**
 — 17 Ref. I.L.R. 1938 All. 805.
 — 22 (F.B.) judgment of Allsop Foll. 17 Pat. 281.
 — 259 Ref. I.L.R. 1938 All. 470.
 — 272 (F.B.) Rel. 42 C.W.N. 18.
 — 403 Appr. I.L.R. 1938 305.
 — 419 Ref. 42 C.W.N. 129.
 — 431 Dist. & Foll. I.L.R. 1938 All. 252.
 — 542 Ref. I.L.R. 1938 All. 35.
 — 655 Ref. I.L.R. 1938 All. 425.
 — 666 Ref. I.L.R. 1938 All. 58.
 — 805 Ref. I.L.R. 1938 All. 29.
 — 880 Diss. 1938 Rang. L.R. 430, Foll. 1938 O.W.N. 401; Ref. 19 P.L.T. 500.
 — 901 Ref. I.L.R. 1938 All. 814.
- I.L.R. 1938 All. 22 Appl. I.L.R. 1938 All. 670.**
 — 71 Foll. I.L.R. 1938 All. 153.
 — 330 Rel. I.L.R. 1938 All. 829.
 — 563 Ref. I.L.R. 1938 All. 801.
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 — 834 Ref. 40 P.L.R. 256.
 — 845 Dist. I.L.R. 1938 All. 922.
- 4 A.L.J. 475 Ref. I.L.R. 1938 All. 563.**
- 5 A.L.J. 367 Ref. 1938 A.L.J. 881.**
 — 529 Diss. I.L.R. 1938 All. 644 = 1938 A.L.J. 561.
- 6 A.L.J. 647 Ref. I.L.R. 1938 All. 563 = 1938 A.L.J. 585 (F.B.).**
- 7 A.L.J. 755 Ref. I.L.R. 1938 All. 563.**
- 8 A.L.J. 645 Foll. 1938 O.W.N. 475.**
- 9 A.L.J. 173 Diss. I.L.R. (1938) 1 Cal. 216, Not Foll. I.L.R. 1938 Nag. 54, Ref. 42 C.W.N. 179.**
 — 499 Ref. 42 C.W.N. 1004.
 — 569 Ref. I.L.R. 1938 All. 148.
 — 819 Ref. 1938 A.L.J. 308.
- 10 A.L.J. 3 Diss. 1938 A.L.J. 252, Ref. 1938 O.W.N. 318, 413 Dist. 13 Luck. 143.**
- 11 A.L.J. 18 Ref. 1938 A.L.J. 901.**
 — 649 Ref. I.L.R. 1938 All. 396 = 1938 A.L.J. 400.
 — 990 Diss. I.L.R. 1938 All. 538 = 1938 A.L.J. 436.
- 12 A.L.J. 685 Rel. 1938 A.L.J. 486.**
- 13 A.L.J. 79 Foll. I.L.R. 1938 Nag. 174.**
 — 745 Ref. 1938 O.W.N. 475.
- — — — —
- 14 A.L.J. 1055 Ref. 1938 A.L.J. 1.**
- 15 A.L.J. 223 Foll. 1938 A.L.J. 746, 1938 O.W.N. 642.**
 — 629 Ref. 1938 A.L.J. 638.
- 16 A.L.J. 307 Dist. 1938 O.W.N. 480.**
 — 428 Ref. 1938 A.L.J. 222.
 — 429 Ref. I.L.R. 1938 All. 192.
 — 469 Ref. I.L.R. 1938 All. 563.
 — 625 Ref. 1938 A.L.J. 673.
 — 653 Ref. 1938 A.L.J. 69.
- 17 A.L.J. 368 Dist. 1938 A.L.J. 222.**
- 18 A.L.J. 609 Ref. 1938 A.L.J. 511.**
- 19 A.L.J. 101 Dist. I.L.R. 1938 All. 243, Ref. 1938 A.L.J. 1.**
 — 227 Ref. 1938 A.L.J. 727.
 — 618 Ref. 1938 A.L.J. 400.
 — 823 Ref. 1938 A.L.J. 544.
- 20 A.L.J. 209 Ref. 1938 A.L.J. 712.**
 — 601 Dist. 1938 A.L.J. 235.
 — 609 Dist. 1938 A.L.J. 328.
 — 672 Ref. I.L.R. 1938 Nag. 333.
- 21 A.L.J. 457 Ref. I.L.R. 1938 All. 396.**
 — 667 Dist. 1938 A.L.J. 901.
- 22 A.L.J. 70 Ref. I.L.R. 1938 All. 396.**
 — 690 Ref. 1938 A.L.J. 235.
 — 968 Ref. I.L.R. 1938 All. 198.
 — 1030 Ref. 1938 A.L.J. 553.
- 23 A.L.J. 223 Dist. 1938 O.W.N. 642.**
 — 254 Ref. 1938 A.L.J. 715.
 — 433 Ref. 1938 Rang. L.R. 121.
 — 880 Rel. 1938 A.L.J. 930; Ref. 13 Luck. 209.
 — 901 Ref. 13 Luck. 219.
- 24 A.L.J. 185 Ref. I.L.R. 1938 All. 125 = 1938 A.L.J. 23.**
 — 347 Foll. I.L.R. 1938 All. 696 = 1938 A.L.J. 820.
 — 537 Ref. I.L.R. 1938 All. 702 = 1938 A.L.J. 628.
- 25 A.L.J. 545 (F.B.) Foll. 1938 A.L.J. 333.**
 — 723 Rel. 1938 A.L.J. 52.
 — 878 Ref. 1938 A.L.J. 465.
 — 1032 Ref. 1938 A.L.J. 742.
- 26 A.L.J. 598 (P.G.) Appl. 1938 A.L.J. 557.**
 — 952 Ref. 1938 A.L.J. 23.
 — 966 (F.B.) Ref. 1938 A.L.J. 117.
 — 1018 Ref. 42 C.W.N. 345.
 — 1353 Ref. 1938 A.L.J. 470.
 — 1378 Ref. 40 P.L.R. 97.
- 27 A.L.J. 105 Ref. 1938 A.L.J. 465.**
 — 581 (P.C.) Dist. & Foll. 1938 A.L.J. 746, 1938 O.W.N. 642, Rel. 1938 A.L.J. 18.
- 1929 A.L.J. 211 Foll. 13 Luck. 35.**
 — 286 Rel. 1938 A.L.J. 121.
 — 794 Dist. 13 Luck. 143.
 — 918 Ref. 1938 A.L.J. 813.
 — 958 Dist. & Appr. I.L.R. 1938 All. 466, Rel. 1938 A.L.J. 379.
 — 1100 Appl. 1938 A.L.J. 834.
- 1930 A.L.J. 109 Rel. 1938 A.L.J. 727.**
 — 148 Dist. & Not Foll. I.L.R. 1938 All. 738, Ref. 1938 A.L.J. 703.
 — 256 (F.B.) Rel. 1938 A.L.J. 519.

1930 A.L.J. 330 Rel. 1938 A.L.J.

- 881
- 588 Dist. 13 Luck. 174.
- 911 Dist. I.L.R. 1938 All
- 647, Ref. 1938 A.L.J. 497.
- 987 Dist. 1938 A.L.J. 449.
- 1073 Ref. I.L.R. 1938 All
- 330, 1938 A.L.J. 268.
- 1212 Appr. I.L.R. 1938 All
- 167
- 1233 (F.B.) Ref. 1938 A.L.J. 720
- 1312 Rel. 1938 A.L.J. 52
- 1931 A.L.J. 60 Dist. I.L.R. 1938 All 79
- 73 Not Appr. I.L.R. 1938 All 63
- 159 Dist. & Rel. I.L.R. 1938 All 466=1938 A.L.J. 379
- 166 Ref. 1938 O.W.N. 758.
- 223 Dist. I.L.R. 1938 All
- 714=1938 A.L.J. 746
- 319 Dist. I.L.R. 1938 All
- 848, Ref. 1938 A.L.J. 917.
- 444 Foll. 1938 A.L.J. 878, Ref. I.L.R. 1938 All. 800
- 458 Cited 1938 A.L.J. 449
- 518 Cited 1938 A.L.J. 449, Rel. 1938 A.L.J. 930.
- 550 Cited 1938 A.L.J. 449.
- 668 Appl. I.L.R. 1938 All.
- 494=1938 A.L.J. 477.
- 680 Dist. I.L.R. 1938 All.
- 647, Ref. 1938 A.L.J. 497.
- 909 Ref. 1938 A.L.J. 502.
- 985 Dist. I.L.R. 1938 All 500
- 1000 Expl. I.L.R. 1938 All.
- 875, Ref. 1938 A.L.J. 943.
- 1049 (F.B.) Rel. 1938 A.L.J. 742
- 1932 A.L.J. 103 Ref. 1938 A.L.J. 531.
- 126 Ref. I.L.R. 1938 All.
- 664=1938 A.L.J. 561.
- 162 Ref. 1938 A.L.J. 943
- 165 Ref. I.L.R. 1938 All 470.
- 311 Ref. I.L.R. 1938 All. 148
- 321 Foll. 1938 A.L.J. 128.
- 341 Rel. 1938 A.L.J. 851.
- 365 Appl. 1938 A.L.J. 63.
- 466 Ref. I.L.R. 1938 All. 470.
- 477 Ref. 1938 A.L.J. 333
- 516 Ref. I.L.R. 1938 All. 35.
- 562 Overr. I.L.R. 1938 All.
- 528, Ref. 1938 A.L.J. 444
- 572 (F.B.) Dist. I.L.R. 1938 All. 441; Ref. 42 C.W.N. 1106, Ref. 1938 A.L.J. 333.
- 588 Ref. 1938 A.L.J. 736.
- 684 (F.B.) Foll. 1938 A.L.J. 578.
- 788 Foll. I.L.R. 1938 All.
- 888=1938 A.L.J. 855
- 971 (P.C.) Ref. 1938 A.L.J. 125.

1932 A.L.J. 1090 Foll. 40 Bom. I.R. 952.

- 1933 A.L.J. 21 Ref. 1938 A.L.J. 1
- 103 Ref. 1938 A.L.J. 63
- 123 (F.B.) Ref. 1938 A.L.J. 12
- 673 (F.B.) Dist. 1938 A.L.J. 578.
- 728 Ref. 1938 A.L.J. 625.
- 1127 (F.B.) Foll. 1938 A.L.J. 449
- 1414 Rel. 1938 A.L.J. 894.
- 1537 Dist. I.L.R. 1938 All. 470
- 1551 Ref. 1938 A.L.J. 943.
- 1934 A.L.J. 318 Ref. 1938 A.L.J. 455
- 381 Ref. 1938 A.L.J. 813.
- 406 Ref. 1938 A.L.J. 894.
- 409 Expl. 1938 A.L.J. 571.
- 585 (P.C.) Foll. 1938 A.L.J. 502.
- 713 Ref. I.L.R. 1938 All. 58
- 770 Ref. I.L.R. 1938 All.
- 528; Dist. 1938 A.L.J. 444.
- 772 Rel. 1938 A.L.J. 117.
- 779 Mentioned. 1938 A.L.J. 23.
- 809 Ref. 1938 O.W.N. 130.
- 925 (P.C.) Ref. 1938 A.L.J. 470
- 955 Rel. I.L.R. 1938 All.
- 470=1938 A.L.J. 578.
- 1035 Dist. 1938 O.W.N. 360.
- 1093 Reversed. 1938 A.L.J. 488 (P.C.).
- 1229 Ref. I.L.R. 1938 All.
- 441=1938 A.L.J. 333.
- 1260 Ref. 1938 O.W.N. 62.
- 1309 Ref. 1938 A.L.J. 107.
- 1935 A.L.J. 133 Rel. 1938 A.L.J. 578.
- 261 Ref. 1938 O.W.N. 62, Rel. 1938 A.L.J. 955
- 405 Diss. 1938 A.L.J. 736
- 474 Appr. I.L.R. 1938 All. 922.
- 505 Ref. I.L.R. 1938 All.
- 396=1938 A.L.J. 400
- 645 Dist. I.L.R. 1938 All.
- 441; Ref. 1938 A.L.J. 333
- 662 Overr. 1938 A.L.J. 561.
- 869 (F.B.) Dist. 1938 A.L.J. 578.
- 925 (P.C.) Foll. 1938 A.L.J. 736.
- 950 Diss. I.L.R. 1938 All.
- 548=1938 A.L.J. 430.
- 973 Ref. I.L.R. 1938 All.
- 623=1938 A.L.J. 534.
- 998 Ref. 13 Luck. 428.
- 1214 (F.B.) Foll. 1938 A.L.J. 894
- 1219 (F.B.) Overr. 1938 A.L.J. 585
- 1291 Ref. 1938 A.L.J. 117.

1936 A.L.J. 208 Ref. 1938 A.L.J. 69.

- 404 Rel. 1938 A.L.J. 235.
- 546 Appr. I.L.R. 1938 All. 1.
- 547 Ref. 1938 A.L.J. 813.
- 594= A.I.R. 1938 All. 537 Foll. 1938 A.L.J. 913.
- 622 Ref. 13 Luck. 20.
- 895 Ref. 1938 A.L.J. 943.
- 923 Ref. 1938 A.L.J. 813.
- 940 Dist. I.L.R. 1938 All. 500.
- 1011 Ref. 1938 A.L.J. 497.
- 1224 Ref. 1938 A.L.J. 644.
- 1250 Ref. 13 Luck. 568.
- 1391 Rel. 1938 A.L.J. 907.
- 1937 A.L.J. 166 Appr. I.L.R. 1938 All. 243; Ref. 1938 A.L.J. 1.
- 174 Ref. I.L.R. 1938 All.
- 814, Rel. 1938 A.L.J. 901.
- 177 Dist. 1938 O.W.N. 220, Foll. I.L.R. 13 Luck. 544.
- 178 Rel. 1938 O.W.N. 573.
- 275 Ref. I.L.R. 1938 All. 396.
- 363 Ref. 13 Luck. 568.
- 459 Ref. 13 Luck. 402.
- 518 Rel. 1938 A.L.J. 851.
- 562 Rel. 1938 A.L.J. 578.
- 659 Rel. 1938 A.L.J. 313, 1938 O.W.N. 433
- 767 Expl. I.L.R. 1938 Nag. 115
- 769 Ref. 42 C.W.N. 212
- 801 Appr. I.L.R. 1938 All.
- 528, Ref. 1938 A.L.J. 444.
- 842 Ref. 1938 A.L.J. 107.
- 870 Foll. 1938 O.W.N. 331.
- 682 Ref. 1938 A.L.J. 892.
- 886 Rel. 1938 A.L.J. 576.
- 945 Ref. 1938 O.W.N. 683.
- 1032 (P.C.) Ref. 1938 A.L.J. 308.
- 1101 Rel. 1938 A.L.J. 628.
- 1126 (P.C.) Rel. 1938 A.L.J. 901.
- 1139 Ref. 1938 A.L.J. 705.
- 1194 Ref. 1938 A.L.J. 703.
- 1197 Ref. 1938 A.L.J. 575.
- 1227 Ref. 1938 A.L.J. 686.
- 1235 Rel. 1938 O.W.N. 801
- 1320 Rel. 1938 A.L.J. 235
- 1938 A.L.J. 56 Ref. I.L.R. 1938 All. 425=1938 A.L.J. 308.
- 103 Ref. 1938 A.L.J. 705.
- 268 Foll. 1938 A.L.J. 919; Ref. 1938 A.L.J. 952.
- 351 Rel. 1938 A.L.J. 686.
- 470 Ref. 1938 A.L.J. 952; Foll. 1938 A.L.J. 919, Rel. I.L.R. 1938 All. 829.
- 628 Foll. 1938 A.L.J. 694.

ALLAHABAD WEEKLY NOTES.

- 1882 A.W.N. 53 Foll. I.L.R. 1938
 All 192.
 — 184 Foll. I.L.R. 1938 All.
 342, Ref. 1938 A.L.J. 117.
 — 244 Ref. (1938) 1 M.L.J.
 662
 1885 A.W.N. 328 Expl. I.L.R.
 1938 All 767 = 1938 A.L.J.
 617.
 1888 A.W.N. 187 Diss. 1938 A.L.
 J. 252, Foll. I.L.R. 1938
 All 363, Ref. 1938 O.W.N.
 318
 1901 A.W.N. 10 Foll. 1938 O.W.
 N. 7.
 — 52 Ref. 1938 A.L.J. 400
 1905 A.W.N. 152 Ref. I.L.R.
 1938 All 466 = 1938 A.L.J.
 379.
 1906 A.W.N. 159 Ref. 40 P.L.R.
 319
 — 204 Ref. I.L.R. 1938 All.
 396 = 1938 A.L.J. 400
 1908 A.W.N. 209 Diss. I.L.R.
 1938 All 856 = 1938 A.L.J.
 936

ALLAHABAD WEEKLY REPORTER

- 1935 A.W.R. 867 Ref. 1938 A.L.
 J. 210
 1936 A.W.R. 56 Ref. 13 Luck. 380
 — 580 Ref. 13 Luck. 380

AGRA HIGH COURT REPORTS

- 3 Agra.H.M.B. 82 Ref. 1938 A.L.
 J. 23.

N.W.P.H.C.B.

- 3 N.W.P.H.C.B. 82 Ref. I.L.R.
 1938 All 125.

I.L.R. BOMBAY SERIES

- 1 Bom. 70 Ref. I.L.R. (1938) 1
 Cal. 21.
 — 342 Expl. 32 S.L.R. 18.
 — 496 Ref. 1938 Rang.L.R.
 243.
 2 Bom. 148 (F.B.) Ref. I.L.R.
 1938 All 697 = 1938 A.L.J.
 724
 — 457 Ref. 13 Luck. 444.
 — 624 Ref. I.L.R. 1938 Bom.
 1, Ref. 13 Luck. 13.
 3 Bom. 23 Appl. I.L.R. 1938 Bom.
 465, Foll. 40 Bom.L.R. 439
 — 74 Ref. 1938 A.L.J. 654
 4 Bom. 37 (F.B.) Foll. I.L.R.
 1938 Nag. 255.
 — 358 Diss. 1938 O.W.N. 801.
 — 429 Ref. I.L.R. 1938 Bom.
 98

- 4 Bom. 545 Ref. 40 P.L.R. 589.
 5 Bom. 58 Ref. I.L.R. (1938) 1
 Cal. 39.
 — 99 Diss. I.L.R. 1938 Rang. L.
 Foll. 40 Bom.L.R. 422, Ref.
 I.L.R. 1938 Bom. 454.
 — 110 Diss. I.L.R. 1938 Nag.
 115.
 — 232 Appl. 1938 O.W.N.
 454
 — 249 Ref. I.L.R. 1938 Lah.
 305
 — 338 Ref. I.L.R. 1938 Mad.
 455
 — 584 Ref. (1938) 1 M.L.J.
 63.
 — 614 Ref. 1938 O.W.N. 535.
 — 630 Ref. 40 Bom.L.R. 428.
 6 Bom. 34 Not Foll. 19 P.L.T.
 432
 — 546 Ref. 40 P.L.R. 319.
 Ref. I.L.R. 1938 All. 901.
 7 Bom. 213 Ref. I.L.R. (1938) 1
 Cal. 75.
 8 Bom. 17 Ref. 40 P.L.R. 685.
 — 105 Diss. I.L.R. 1938 Nag.
 116.
 — 105 Mentioned 40 Bom.L.R.
 1010.
 9 Bom. 108 Diss. I.L.R. 1938 All.
 535, Ref. 1938 A.L.J. 495.
 — 371 Foll. (1938) 2 M.L.J.
 137
 — 419 Ref. 40 Bom.L.R.
 1015
 — 458 Ref. 40 P.L.R. 243.
 10 Bom. 439 Ref. I.L.R. 1938
 Lah. 491
 11 Bom. 199 Foll. 40 Bom.L.R.
 422, Ref. I.L.R. 1938 Bom.
 454
 — 488 Foll. 40 Bom.L.R. 152
 — 551 Ref. I.L.R. 1938 Nag.
 54.
 — 614 Ref. 40 Bom.L.R. 439
 12 Bom. 84 Ref. 40 Bom.L.R. 88
 — 158 Ref. 40 Bom.L.R. 1005
 — 164 Ref. I.L.R. (1938) 1
 Cal. 75
 — 202 Foll. I.L.R. 1938 Mad.
 621, Ref. (1938) 2 M.L.J.
 613.
 — 217 Ref. 40 P.L.R. 319.
 — 311 Ref. 32 S.L.R. 167.
 — 363 Diss. I.L.R. 1938 Lah.
 374.
 — 400 Ref. 1938 Rang.L.R.
 565.
 13 Bom. 160 Diss. 1938 Bom. 84
 — 389 Ref. 32 S.L.R. 567
 — 506 Ref. 1938 Rang.L.R.
 121.
 14 Bom. 82 Ref. 40 Bom.L.R. 88.
 — 102 Diss. 40 P.L.R. 801
 — 115 Ref. 1938 Rang.L.R.
 213, 32 S.L.R. 87
 — 213 Ref. 42 C.W.N. 1102.
 — 458 Foll. 40 Bom.L.R. 166
 — 482 Foll. 40 Bom.L.R. 418.

- 15 Bom. 22 Ref. 40 P.L.R. 33.
 — 348 Ref. 1938 O.W.N. 318.
 — 418 Ref. (1938) 1 M.L.J.
 750.
 — 647 Ref. 40 Bom.L.R.
 1015.
 16 Bom. 338 Foll. 40 P.L.R. 82.
 — 441 Foll. I.L.R. 1938 Nag.
 308
 — 580 Ref. 40 Bom.L.R. 832.
 — 673 Ref. 42 C.W.N. 783.
 17 Bom. 431 (P.O.) Ref. 40
 Bom.L.R. 89
 — 475 Ref. 40 Bom.L.R. 1015.
 — 560 Ref. (1938) 1 M.L.J.
 422.
 — 600 Ref. I.L.R. 1938 All.
 904.
 18 Bom. 136 Foll. 40 Bom.L.R.
 418.
 — 260 Ref. 40 P.L.R. 768.
 — 283 Ref. I.L.R. 1938 Nag.
 50.
 — 337 Mentioned I.L.R. 1938
 Bom. 64
 — 369 Ref. (1938) 2 M.L.J.
 189.
 19 Bom. 532 Ref. I.L.R. 1938
 Bom. 655, Foll. 40 Bom.
 L.R. 324.
 20 Bom. 15 Ref. (1938) 1 M.L.J.
 146.
 — 133 Ref. 19 P.L.T. 309.
 — 165 Foll. 17 Pat. 369, Ref.
 19 P.L.T. 268
 — 265 Diss. 40 Bom.L.R. 1040.
 — 460 Ref. 1938 O.W.N. 535.
 — 636 Diss. 1938 Rang.L.R.
 19
 21 Bom. 279 Ref. I.L.R. (1938) 1
 Cal. 146 = 42 C.W.N. 55.
 — 281 Ref. 32 S.L.R. 215
 — 297 Ref. 1938 Rang.L.R.
 166.
 — 351 Ref. (1938) 2 M.L.J.
 44
 — 822 Ref. 1938 Rang.L.R.
 176
 22 Bom. 335 Ref. 32 S.L.R. 185.
 Ref. I.L.R. 1938 All. 875 =
 1938 A.L.J. 943.
 — 281 Ref. (1938) 1 M.L.J.
 368.
 — 320 Ref. I.L.R. 1938 Lah.
 586 = 40 P.L.R. 494
 — 711 Ref. 40 P.L.R. 501
 — 774 Foll. 40 Bom.L.R. 418.
 — 783 Ref. I.L.R. (1938) 1
 Cal. 512
 — 899 Foll. I.L.R. 1938 Nag.
 308.
 — 963 Ref. 40 Bom.L.R.
 1040
 23 Bom. 514 Ref. I.L.R. 1938
 Mad. 533
 — 608 = 1 Bom.L.R. 95 Foll.
 40 Bom.L.R. 422
 — 626 Diss. & Diss. (1938) 1
 M.L.J. 769.

- 23 Bom 659=1 Bom L.R. 118
Ref 40 Bom L.R. 1041; 42
C W N 345
— 789 Doubr I L R. 1938
Bom 84
- 24 Bom 360=2 Bom L.R. 25
Foll 40 Bom L.R. 174, Ref
1938 2 M.L.J. 189
— 423=2 Bom L.R. 52
Mentioned 40 Bom L.R.
820
- 25 Bom 85 Disc I L R. 1938
Lah 341, Foll 40 P.L.R.
196
— 306 Rel. I L R 1938 Bom.
84
— 332 Ref I L R. (1938) 1
Cal 202
— 337 Ref. 19 P.L.T. 193.
— 367=2 Bom L.R. 1134
Rel 40 Bom L.R. 202.
— 387 Ref 32 S.L.R. 567,
Rel 32 S.L.R. 106
— 680 Dis I L R. (1938) 1
Cal 290, Ref. 42 C.W.N. 1
129
- 26 Bom. 146 Dist I L R (1938) 1
Cal 685.
— 180 Ref 1938 Rang L.R.
150
— 198 Ref 40 P.L.R. 319.
— 206 Rel I L R (1938) 1
Cal 369.
— 305 Ref I L R 1938 All 909
— 374 Rel, 40 P.L.R. 46.
— 526 Ref. 40 Bom L.R. 559
— 551 Appr. I L.R. 1938 All
805
— 558 Ref. 40 P.L.R. 806.
— 597 Foll. I L R 1938 Nag.
280.
— 543 Disappr. I L.R. (1938)
2 Cal. 337=42 C.W.N. 1023.
— 730=40 Bom L.R. 513 Rel.
40 Bom L.R. 548.
— 782 Appr. I L R 1938 All.
363, Disc 1938 A.L.J. 252,
Ref. 1938 O.W.N. 318.
— 792 Ref. I L.R. (1938) 1
Cal. 75
- 27 Bom 1 (F.B.) Ref. 40 P.L.R.
571.
— 150 (F.B.) Expl. (1938) 1
M.L.J. 56
— 162 Ref. 13 Luck. 20
— 189 Ref I L.R. 1938 All.
114.
— 363 Rel. 40 P.L.R. 319.
— 452=5 Bom L.R. 144 Rel.
40 Bom L.R. 202.
— 500 Rel. 40 P.L.R. 319.
— 518 Foll 17 Pat. 268; Ref.
19 P.L.T. 652
- 28 Bom. 8 Disc. 42 C.W.N. 1174.
— 11=5 Bom L.R. 618 Ref
40 Bom L.R. 1005.
— 305 Foll. I L.R. 1938 Nag.
27; Ref. 40 Bom L.R. 88.
— 432 Diss. 40 P.L.R. 801.
- 28 Bom. 461 Ref. I L R. 1938
Bom. 84.
— 533 Ref. 42 C.W.N. 31.
— 616 Foll. I L.R. 1938 Nag.
308
- 29 Bom 29 Foll I L.R. 1938 Lah.
624=40 P.L.R. 530.
— 300 Rel. I L.R. 1938 Lah.
367.
— 391 Ref. I L.R. (1938) 1
Cal 21.
— 30 Bom 49 Appr. 65 I.A. 158=
I.L.R. (1938) 2 Cal. 295,
(1938) 1 M.L.J. 647.
— 56 Rel. (1938) 1 M.L.J. 796.
— 83 Foll. I L R. 1938 Nag
308
— 115 Ref. 40 P.L.R. 768.
— 205 Ref. 40 P.L.R. 166
— 240 Ref. 32 S.L.R. 106
— 275 Ref. I L.R. (1938) 1
Cal 231.
— 329 Foll. I L.R. 1938 Nag.
409.
— 348 Rel. I L.R. 1938 Mad.
347.
— 500=8 Bom L.R. 322 Dist.
40 Bom L.R. 418.
31 Bom 583=9 Bom L.R. 560
Foll 40 Bom L.R. 418
— 591 Rel 32 S.L.R. 215.
— 604 Appr 42 C.W.N. 154.
Ref I L.R. (1938) 1 Cal.
146, 42 C.W.N. 441, 42 C.
W.N. 55, (1938) 1 M.L.J.
391.
— 611=9 Bom L.R. 967 Rel.
40 Bom L.R. 820.
- 32 Bom. 106 Dist. I L R 1938
Nag 186.
— 296 Foll. (1938) 1 M.L.J.
450
— 384 Rel. I L.R. 1938 All.
829.
— 386 Foll. 40 P.L.R. 429.
— 449 Diss 1938 O.W.N. 676.
— 499 Expl. & Affirm I L.R.
1938 Bom. 679; 40 Bom.
L.R. 559.
— 560 Disc. I L.R. 1938 Lah.
341; Diss. 40 P.L.R. 196
— 572 Ref 40 P.L.R. 128.
- 33 Bom 221 Ref. 32 S.L.R. 87.
— 373 Ref. I L.R. 1938 All
904.
— 393=31 C 500 Dist 42 C.
W.N. 768.
— 423 Dist I L.R. (1938) 1
Cal. 290; Ref. 42 C.W.N.
129.
— 483=11 Bom L.R. 674
Ref. 40 Bom L.R. 432
— 509 Ref 42 C.W.N. 345.
— 644 Ref 1938 Rang L.R.
521.
- 34 Bom 72 Ref. I L.R. (1938) 1
Cal. 669; Ref. & Not Foll
(1938) 2 M.L.J. 256.
— 91=11 Bom L.R. 1102
Dist. 40 Bom L.R. 400.
- 54 Bom. 165 Dist. I L.R. 1938
Bom. 155=40 Bom L.R. 147.
— 553 Disappr. I L.R. 1938
Nag. 255.
35 Bom. 29 Ref. I L.R. (1938) 1
Cal 512.
— 35 Disc 17 Pat. 191.
— 79=8 I.C. 639 Ref. 40 P.
L.R. 768.
— 139 Obiter appr. 40 Bom L.
R. 571; Rel. I L.R. 1938
Bom. 529
— 186=12 Bom L.R. 860.
Ref. 40 Bom L.R. 889.
— 388 Ref. 40 Bom L.R. 521.
— 425 Foll. I L.R. 1938 Mad.
466=(1938) 2 M.L.J. 651.
— 487 Ref. I L.R. 1938 Bom.
259.
— 507 Ref. 42 C.W.N. 560
- 36 Bom. 58=13 Bom L.R. 878
Ref. 40 Bom L.R. 411.
— 111 Foll. I L.R. 1938 Bom.
184
— 135 Rel. 40 P.L.R. 319.
— 156 Rel. upon I L.R. (1938)
1 Cal 175.
— 589=14 Bom L.R. 592
Ref 40 Bom L.R. 432.
— 638 Ref. 13 Luck. 162.
- 37 Bom. 42=14 Bom L.R. 861
Ref 40 Bom L.R. 411.
— 76 Foll 42 C.W.N. 1191.
— 101 Ref. 32 S.L.R. 567.
— 572=14 Bom L.R. 1106
Dist. & Diss. 40 Bom L.R.
470; Expl I L.R. 1938
Bom. 399
— 595 Ref. I L.R. 1938 Bom.
259.
- 38 Bom. 41 Rel. 13 Luck. 397.
— 116 Dist. I L.R. 1938 Bom.
696.
— 155 Not foll. 19 P.L.T. 104.
— 177 Foll. 1938 Rang L.R.
35
— 309=16 Bom L.R. 5 (F.B.)
Dist. 40 Bom L.R. 571.
— 631=A I R. 1914 Bom. 289.
Ref. 40 P.L.R. 768.
— 642 (F.B.) Rel. I L.R. 1938
Lah. 229.
- 39 Bom 182 Foll. 1938 O.W.N..
513.
— 399 Ref. I L.R. 1938 Nag..
330.
- 40 Bom 97=A I R. 1915 Bom.
203 Ref. 40 P.L.R. 501.
— 186 Ref. (1938) 1 M.L.J..
767.
— 254=17 Bom L.R. 1140.
Foll. 40 Bom L.R. 432.
— 313 Foll. 40 P.L.R. 24.
- 41 Bom 49 Foll. I L.R. 1938 Mad..
466; Ref. (1938) 2 M.L.J..
651.
— 347=19 Bom L.R. 50 Foll..
40 Bom L.R. 1029
— 428 Ref. 42 C.W.N. 38.

- 41 Bom. 438 Ref. I.L.R. (1938) 1 Cal. 607.
— 485 Fol. I.L.R. 1938 Mad 278
— 625 Ref. I.L.R. 1938 Lab. 571
- 42 Bom. 172 Ref. 1938 Rang L.R. 104
— 504-20 Bom.L.R. 661 Ref 13 Luck. 242, 40 Bom L.R. 664.
— 635 Ref 13 Luck. 20.
- 43 Bom 37-20 Bom L.R. 779 Fol. I.L.R. 1938 Nag. 27, Ref 40 Bom L.R. 88.
— 66 Fol. I.L.R. 1938 Nag 279.
— 676 (P.C.) Dist. I.L.R. 1938 Lab 379, Fol. I.L.R. 1938 Nag. 302.
— 607 Diss I.L.R. 1938 Nag 106
— 575 Dist. 13 Luck 255.
— 641 Dist (1934) 1 M.L.J. 444
- 44 Bom 82-21 Bom L.R. 952 Appr. 40 Bom L.R. 238.
— 474 (P.O.) Ref. I.L.R. 1938 Mad 91 (P.C.).
— 508 Ref I.L.R. 1938 Bom. 81
— 566-22 Bom.L.R. 717 Ref. 40 Bom L.R. 439
— 591 Dist 13 Luck 323
— 595-22 Bom L.R. 746 Ref I L R 1938 Bom 259-40 Bom L.R. 104
— 742 Ref 19 P.L.T. 594
— 854-22 Bom L.R. 882 Overr. I.L.R. 1938 Bom 655-40 Bom.L.R. 324.
- 45 Bom. 241 Ref. 1938 Rang L.R. 580.
— 446-22 Bom.L.R. 1363 Dist 40 Bom L.R. 521, 40 Bom L.R. 1029
— 657 Ref I.L.R. 1938 Nag 255
— 607 Ref 17 Pat. 507=19 P.L.T. 309
— 648 Diss. 13 Luck. 425.
— 1137 Ref. I.L.R. 1938 Lab. 571.
— 1170 Ref. I.L.R. (1938) 1 Cal 607=42 C.W.N. 38.
— 1228 Ref I.L.R. 1938 Lab. 305.
— 1256 Ref 17 Pat. 89=19 P. L.T. 372.
— 1286 Ref 42 C.W.N. 1070, I.L.R. 1938 Bom. 752
- 46 Bom. 448 Dist I.L.R. 1938 All. 840, Ref. 1938 A.L.J. 867.
— 535-23 Bom L.R. 1191 Ref. 40 Bom L.R. 521.
— 541=24 Bom L.R. 69 Expl. Appr. I.L.R. 1938 Bom. 679-40 Bom L.R. 559.
- 46 Bom. 544 Ref. I.L.R. (1938) 1 Cal 531.
— 635 (F.B.) Cons. I.L.R. 1938 Bom. 98.
— 657-24 Bom.L.R. 226 Fol 40 Bom L.R. 439
— 773 Ref. 42 C.W.N. 422.
— 833 Diss. 19 Pat L.T. 111 Ref. I.L.R. (1938) 1 Cal 512.
— 961 Reviewed. 17 Pat. 15.
- 47 Bom. 28 Ref. (1938) 1 M.L.J. 344.
— 37-24 Bom L.R. 838 Expl. & Appr I.L.R. 1938 Bom. 679-40 Bom L.R. 559.
— 174 Ref. 65 L.A. 32-1 L.R. 1938 Bom 249=(1934) 1 M.L.J. 161
— 263 Fol. I.L.R. 1938 Nag 304
— 578 Ref 19 P.L.T. 549.
— 597 Ref. (1938) 1 M.L.J. 656.
— 621 Ref. I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
— 632 Ref 1934 Rang.L.R. 594.
— 637 Ref (1938) 2 M.L.J. 256.
— 643-25 Bom L.R. 474 Ref. 40 Bom L.R. 411
— 678-25 Bom L.R. 301 Ref I L R 1938 Bom 723-40 Bom L.R. 876
— 699 Fol. I.L.R. 1938 Nag 149, Ref I.L.R. (1938) 1 Cal 146=42 C.W.N. 212, 42 C.W.N. 55, I.L.R. 1938 Nag 149.
— 721 Appr. I.L.R. 1938 All. 805, Ref. 1938 A.L.J. 813
- 48 Bom 384 Ref. I. L. R. 1938 Bom 259
— 428 Ref. I.L.R. 1938 Nag 1
— 442 Dist. I.L.R. 1938 Nag 409; Ref 17 Pat. 507=19 P. L.T. 309
— 625 Ref. I.L.R. (1938) 1 Cal 531=42 C.W.N. 422.
- 49 Bom. 149 Ref. (1938) 1 M.L.J. 728.
— 526 Ref. 1938 Rang L.R. 35, Ref. I.L.R. 1938 Bom. 465.
— 642 Ref. I.L.R. 1938 All. 875=1938 A.L.J. 943
— 892 Ref. 32 S.L.R. 87
- 50 Bom. 1 (F.B.) Ref. I.L.R. (1938) 1 Cal 531=42 C.W.N. 422.
— 162 Ref. (1938) 2 M.L.J. 340.
— 204 Ref. I.L.R. 1938 Nag 1.
— 357 Ref. I.L.R. (1938) 1 Cal. 146=42 C.W.N. 55.
- 50 Bom 402 Ref. I.L.R. 1938 Mad. 466=(1938) 2 M.L.J. 651.
— 674 Diss. 19 P.L.T. 511.
— 683 Dist. I.L.R. (1938) 1 Cal 200, 42 C.W.N. 129.
— 816-28 Bom.L.R. 1446 Fol. 40 Bom L.R. 202.
— 839 Ref. 13 Luck. 340
- 51 Bom 78 Fol. 32 S.L.R. 185.
— 167 Ref. I.L.R. 1938 Nag. 54.
— 430 (F.B.) Fol. (1938) 2 M.L.J. 128, Ref. 40 P.L.R. 712
— 450 Ref. I.L.R. 1938 All. 425
— 487 Ref. I.L.R. (1938) 1 Cal 640
— 725=51 L.A. 338 Ref. I.L.R. 1938 All. 823, 32 S.L.R. 567.
— 771-29 Bom L.R. 900 Ref I.L.R. 1938 Bom. 64.
— 971 Appr. I.L.R. 1938 All. 125.
— 1019-29 Bom L.R. 1671 Ref. I.L.R. 1938 Bom. 723=40 Bom L.R. 876
— 1040 Ref (1938) 2 M.L.J. 632, 19 P.L.T. 35.
- 52 Bom 160 Ref (1938) 2 M.L.J. 407.
— 208-30 Bom L.R. 102 Treat as Overr. I.L.R. 1938 Bom 649=40 Bom L.R. 512
— 257 Ref 40 P.L.R. 501.
— 313 Ref 19 P.L.T. 383.
— 521 Appr I.L.R. 1938 All 363, Diss 1938 A.L.J. 252, Fol. 40 Bom.L.R. 1010.
— 526 Ref 1938 O.W.N. 318.
— 640 Dist 1938 Rang L.R. 521.
— 693 Ref. I.L.R. (1938) 1 Cal 607=42 C.W.N. 38.
— 832 (F.B.) Ref 32 S.L.R. 567.
— 904 Ref (1938) 1 M.L.J. 628 (F.B.).
- 53 Bom. 344 Appr. 1938 A.L.J. 382, 40 Bom.L.R. 787; I.L.R. (1938) Cal. 295, (1938) 1 M.L.J. 647, Ref 42 C.W.N. 621, 19 P.L.T. 343.
— 353=31 Bom L.R. 129 Ref. 40 Bom.L.R. 1001.
— 419 Ref. 40 P.L.R. 678
— 819 Fol. I.L. 1938 Nag. 268.
- 54 Bom 226 Dist I.L.R. 1938 Nag 348.
- 56 Bom. 97=32 Bom L.R. 1394 Ref 40 Bom.L.R. 989
— 109 Dist 13 Luck. 242.
— 231 Ref. 40 Bom L.R. 916=I.L.R. 1938 Bom 752, 42 C.W.N. 1070.

- 55 Bom 356 Foll. 32 S.L.R. 30.
 —368 Rel. I.L.R. 1938 Nag. 359.
 —414 Rel. 13 Luck. 81.
 —544 Ref. I.L.R. (1938) 1 Cal 146=42 C.W.N. 58.
 —709=33 Bom L.R. 1144 Doubt, 40 Bom.L.R. 964.
 56 Bom. 129=34 Bom L.R. 104 Dist. 40 Bom.L.R. 343.
 —292=34 Bom. L.R. 447 Ref 40 Bom.L.R. 324
 —127 Ref I.L.R. 1938 Bom 53.
 —448 Ref. 32 L.R. 567, 32 S.L.R. 622.
 —695 Comm. I L.R. 1938 Bom 445.
 57 Bom 40 Disc & Dist. 19 P.L.T. 35
 —67 Dist. 32 S.L.R. 567
 —157=A I R. 1933 P.O. 1 Ref 40 P.L.R. 824.
 —507=146 I.C. 340 Ref. 40 P.L.R. 303
 —513 Rel. 13 Luck 549
 —519 Rel. & Not Appr. I.L.R. 1938 All 432=1938 A.L.J. 341
 —802 Foll. 1938 Rang L.R. 521
 58 Bom 40 Ref 1938 Rang.L.R. 213.
 —67 Ref (1938) 1 M.L.J. 293.
 —327 Not Foll. I.L.R. (1938) 1 Cal 21
 —348=36 Bom.L.R. 327 Ref 40 Bom L.R. 1005
 —518 Ref. (1938) 1 M.L.J. 281, (1938) 2 M.L.J. 22, Rel I.L.R. 1938 Mad 867
 —564 Rel. I.L.R. 1938 Lah. 582.
 —650=61 I.A. 388 Ref 17 Pat. 460, 1938 Rang.L.R. 216
 —660 Not Appr. 40 Bom.L.R. 19, Ref. I.L.R. 1938 All. 114, Rel. (1938) 2 M.L.J. 141.
 59 Bom 114 Ref. 1938 Rang L.R. 270.
 —161 Rel. I.L.R. 1938 All. 50.
 —310 Foll 17 Pat 9, Ref. I.L.R. 1938 Bom 331.
 —360=A.I.R. 1935 P.C. 95 Ref. 40 P.L.R. 824.
 —454 Ref. (1938) 1 M.L.J. 320.
 —625 Dist. 19 P.L.T. 35.
 60 Bom 62 Ref. 42 C.W.N. 437.
 —228 Appr. 1938 O.W.N. 590.
 —311 Disc. I.L.R. 1938 Nag 382.
 —326=A.I.R. 1936 Bom All Ref (1938) 2 M.L.J. 688.
 —394 Ref I.L.R. 1938 Bom 471.

- 60 Bom 551 Affirm. 65 I.A. 32 =I.L.R. 1938 Bom. 249.
 —954 Dist. I.L.R. 1938 Bom. 471
 I.L.R. 1937 Bom 508=39 Bom. L.R. 382 (F.B.) Foll. 40 Bom L.R. 559
 —628 Dist. I.L.R. 1938 Bom. 102.

BOMBAY LAW REPORTER.

- 1 Bom L.R. 263 Foll. I.L.R. 1938 Nag. 308
 2 Bom L.R. 93 Ref. 40 Bom.L.R. 439
 —800 Ref. 40 Bom.L.R. 202
 —845 Ref. I.L.R. 1938 Bom. 75
 5 Bom L.R. 118 Ref. I.L.R. (1938) 1 Cal. 21.
 —980 Expl. & Ref. I.L.R. 1938 Bom. 119, Rel. I.L.R. 1938 Bom 31.
 6 Bom.L.R. 403 Foll. (1938) 1 M.L.J. 728.
 7 Bom.L.R. 57 Ref. 40 P.L.R. 166
 —941 Ref. 40 Bom.L.R. 390.
 9 Bom L.R. 125 Foll I.L.R. 1938 Nag. 308.
 —1021 Ref. 42 C.W.N. 560.
 —1347 Ref. 40 Bom.L.R. 387
 10 Bom L.R. 615 Appr I.L.R. 1938 All. 714, 1938 O.W.N. 642
 —657 Dist. 40 Bom. L. R. 432.
 12 Bom L.R. 730 Rel. 32 S.L.R. 567.
 —1079 Foll. I.L.R. 1938 Nag. 308
 13 Bom.L.R. 879 Ref. 40 Bom.L. R. 104
 —920 Dist 40 Bom.L.R. 195.
 14 Bom.L.R. 340 Foll. 40 Bom.L. R. 132
 —947 Foll 40 Bom.L.R. 387.
 15 Bom.L.R. 13 (P.O.) Dist. I.L. R. 1938 Bom. 184.
 —348 Disappr. I L. R 1938 All. 363, Disc. 1938 A.L.J. 252.
 —489 (P.O.) Rel 32 S.L.R. 567
 —680 Ref. 40 Bom.L.R. 104.
 —1034 Comm. 40 Bom L.R. 552, Dist. 42 C.W.N. 768.
 16 Bom L.R. 57 Comm. 40 Bom. L.R. 443.
 17 Bom L.R. 68 Ref. 40 Bom.L.R. 832
 —510 Foll. I.L.R. 1938 Nag. 174.
 22 Bom.L.R. 771 Rel I L.R. 1938 Bom. 155, Foll. 40 Bom.L. R. 147.

- 22 Bom.L.R. 987 Rel. 32 S.L.R. 106.
 —1104 Ref. 40 Bom. L. R. 111.
 —1883 Dist. 40 Bom. L. R. 127.
 23 Bom.L.R. 314 Ref. 40 Bom.L. R. 400.
 —374 Ref. (1938) 1 M.L.J. 728.
 —553 Ref. 40 Bom. L. R. 1015.
 24 Bom L.R. 406 Dist. 40 Bom.L. R. 974.
 —389 Ref. 40 Bom. L. R. 960.
 —831 Foll. 40 Bom L. R. 439
 25 Bom L.R. 77 Ref. (1938) 1 M.L.J. 728.
 —228 Ref. 40 Bom.L.R. 422.
 —411 Dist. 40 Bom. L. R. 960.
 —459 Foll 40 Bom. L. R. 507.
 —468 Foll. I.L.R. 1938 Bom. 399=40 Bom L.R. 470.
 —1005 Ref. 40 Bom. L. R. 1015.
 26 Bom.L.R. 265 Ref 40 Bom L. R. 104
 —321 Foll. 40 Bom L. R. 238.
 —341 Ref 40 Bom. L. R. 1601.
 —364 Rel. 32 S.L.R. 106.
 —418 Dist 40 Bom. L. R. 545
 —551 Ref. 1938 A.L.J. 813
 —754 Foll. 40 Bom. L. R. 407
 27 Bom.L.R. 211 Foll. 40 Bom. L. R. 548.
 —419 Dist. 1938 Rang.L.R. 19
 —467=A I R. 1925 Bom. 339 Ref. 40 P.L.R. 240.
 —645 Foll. 40 Bom. L. R. 461.
 —1019 Overr. I. L. R. 1938 Bom 58.
 —1336 Ref. 40 Bom L. R. 439.
 28 Bom L.R. 424 Foll. 40 Bom. L. R. 461.
 —674 Diss. 32 S.L.R. 185.
 —1000 Foll. I. L. R. 1938 Bom. 53=40 Bom. L. R. 115
 —1299 Not Foll. I.L.R. 1938 Mad. 729=(1938) 1 M.L.J. 821.
 29 Bom L.R. 153 Mentioned 40 Bom.L.R. 820.
 —396 Ref. 42 C.W.N. 310.
 —442 Ref. (1938) M.L.J. 189.
 —969 Dist. 40 Bom. L. R. 478.

30 Bom L.R. 859 Foll 40 Bom L.R. 222.
 — 1084 Ref 40 Bom L.R. 347.
 — 1463 Ref 40 Bom L.R. 470.
 31 Bom L.R. 357 Dist. 40 Bom L.R. 956.
 — 100 Foll 42 C.W.N. 245.
 — Ref 40 Bom L.R. 416.
 — 1081 Ref 40 Bom L.R. 141.
 — 1507 Dist 19 P.L.T. 552.
 — 1442 Ref 40 Bom L.R. 650.
 32 Bom L.R. 350 (P.C.) Ref 40 Bom L.R. 1015.
 — 574 Foll 40 Bom L.R. 927.
 — 1455 Ref 40 Bom L.R. 1041.
 — 1679 Ref 40 Bom L.R. 1015.
 33 Bom L.R. 210 Foll 40 Bom L.R. 432, Ref. I.L.R. 1938 Bom. 465.
 — 580 Foll 40 Bom L.R. 202.
 — 703 Ref 40 Bom L.R. 979.
 — 971 Ref 40 Bom L.R. 39.
 — 1029 Foll 40 Bom L.R. 407.
 — 1109 Foll 40 Bom L.R. 979.
 — 1111 Foll 1938 Bom. 738.
 — 1161 Ref I.L.R. 1938 Bom. 403 = 40 Bom L.R. 453.
 34 Bom L.R. 167 Foll 40 Bom L.R. 989.
 — 301 Ref 41 C.W.N. 729.
 — 862 Cons 40 Bom L.R. 371.
 — 926 Dist. 40 Bom L.R. 458.
 — 1001 Dist 40 Bom L.R. 458.
 — 1015 Foll 40 Bom L.R. 115.
 — 1087 Ref I.L.R. (1938) 1 Cal. 290.
 — 1131 Foll 40 Bom L.R. 439.
 — Ref. I.L.R. 1938 Bom. 465.
 35 Bom L.R. 150 Foll 40 Bom L.R. 461.
 — 388 Ref 40 Bom L.R. 1005.
 — 576 Ref I.L.R. 1938 Bom. 259 = 40 Bom L.R. 104.
 — 722 Ref. 1938 Rang L.R. 216; 42 C.W.N. 38.
 36 Bom L.R. 11 Ref. 40 Bom L.R. 141.
 — 150 Ref I.L.R. 1938 Lah. 582.
 — 339 Dist. 40 Bom L.R. 118.
 — 625 Foll 40 Bom L.R. 381.
 — 807 Ref 40 Bom L.R. 964.
 — 814 Ref 40 Bom L.R. 964.
 37 Bom L.R. 106 Appr. 40 Bom L.R. 297.
 — 130 (P.C.) Ref 40 Bom L.R. 713 (P.C.). 40 Bom L.R. 799.
 — 209 Foll 40 Bom L.R. 439.
 — 230 Ref 1938 Rang L.R. 385.
 — 349 Foll 40 Bom L.R. 461.
 — 376 Dist. 40 Bom L.R. 1015.
 — 405 Ref 40 Bom L.R. 964.
 — 489 Ref 40 Bom L.R. 411.
 — 706 Ref 40 Bom L.R. 548.
 — 931 Not Appr. 40 Bom L.R. 19.

38 Bom L.R. 34 Ref 40 Bom L.R. 497.
 — 166 Foll 1938 Rang L.R. 63.
 — 610 Dist 40 Bom L.R. 497.
 — 681 (P.C.) Ref. I.L.R. 1938 Bom. 179 = 40 Bom L.R. 75.
 — 927 Ref. 40 Bom L.R. 859.
 — 941 Dist I.L.R. 1938 Bom. 202 = 40 Bom L.R. 334.
 — 971 Ref. 19 P.L.T. 246.
 39 Bom L.R. 309 (P.C.) Foll 40 Bom L.R. 185.
 — 540 Ref 40 Bom L.R. 411.
 — 40 Bom L.R. 676.
 — 720 (P.C.) Foll 40 Bom L.R. 132.
 — 910 Foll 40 Bom L.R. 455.
 — 917 Foll I.L.R. 1938 Bom. 445 = 40 Bom L.R. 371.
 — 1019 (P.C.) Foll I.L.R. 1938 Bom. 649 = 40 Bom L.R. 512.
 40 Bom L.R. 314 Ref. 40 Bom L.R. 320.

BOMBAY HIGH COURT REPORTS.

1 Bom H.C.R. (App) 51 Ref. I.L.R. (1938) 1 Cal. 369.
 — 189 Ref. I.L.R. 1938 Nag 91.
 5 Bom H.C.R. (App) 1 Expt 42 C.W.N. 230. Ref. I.L.R. (1938) 1 Cal. 476.
 — (Cr) 85 Ref 32 S.L.R. 87.
 — (A.C.) 181 Ref I.L.R. 1938 Bom. 84, 40 P.L.R. 824.
 7 Bom H.C.R. 144 Dist. 40 Bom L.R. 158.
 8 Bom H.C.R. 32 (Crown cases) Ref (1938) 2 M.L.J. 416.
 9 Bom H.C.R. 69 Ref I.L.R. 1938 Nag 91.
 — 79 Ref I.L.R. 1938 Nag 91.
 10 Bom H.C.R. 204 Ref 32 S.L.R. 567.
 11 Bom H.C.R. 117 Ref 32 S.L.R. 567.

I.L.R. CALCUTTA SERIES

1 Cal 11 Ref. I.L.R. 1938 All. 114.
 — 133 (P.C.) Dist I.L.R. 1938 Nag. 182.
 — 186 (P.C.) Ref 40 P.L.R. 588.
 — 207 Ref. 32 S.L.R. 185.
 — 264 Foll I.L.R. 1938 Nag. 304.
 — 422 Appr I.L.R. 1938 All. 840, Ref 1938 A.J. 867.
 2 Cal 233 (P.C.) Ref I.L.R. 1938 Nag 54.
 — 327 Ref 13 Lark 549.
 3 Cal 192 (P.C.) Ref (1938) 1 M.L.J. 676.

3 Cal 198 (P.C.) Dist. I.L.R. 1938 Nag 182, Foll I.L.R. 1938 Nag 1; Ref I.L.R. 1938 Nag 10.
 — 224 Ref. 40 P.L.R. 319.
 — 314 Foll 17 Pat. 268, Ref. (1938) 2 M.L.J. 189, 19 P.L.T. 579.
 — 353 Dist. 19 P.L.T. 186.
 — 468 Cons. I.L.R. (1938) 1 Cal. 337 = 42 C.W.N. 1023.
 — 765 Ref I.L.R. (1938) 1 Cal. 200 = 42 C.W.N. 129.
 — 806 (P.C.) Dist. I.L.R. 1938 All. 922, Foll 1938 A.L.J. 955.
 4 Cal 455 Ref. I.L.R. (1938) 1 Cal. 652.
 — 744 Ref. I.L.R. 1938 All. 192.
 — 897 Ref. (1938) 1 M.L.J. 834.
 6 Cal 71 Ref. (1938) 1 M.L.J. 63.
 — 148 Dist. I.L.R. 1938 Nag 182, Foll I.L.R. 1938 Nag 1.
 — 636 Dist. I.L.R. 1938 All. 483 = 1938 A.L.J. 225.
 — 740 Dist 17 Pat. 398, Ref. 19 P.L.T. 519.
 — 792 Ref. I.L.R. (1938) 1 Cal. 369.
 — 910 Dist 17 Pat. 350 = 19 P.L.T. 202.
 6 Cal 8 (F.B.) Dist 42 C.W.N. 467, Ref 32 S.L.R. 567.
 — 171 Expt. I.L.R. 1938 Lah. 494.
 — 620 Ref. 19 P.L.T. 51.
 — 707 Ref. I.L.R. (1938) 1 Cal. 75.
 7 Cal 137 Ref. 42 C.W.N. 806.
 — 258 Ref. 40 Bom L.R. 174; 17 Pat. 268, 19 P.L.T. 579, (1938) 2 M.L.J. 189.
 — 288 Foll I.L.R. 1938 Mad. 621, Ref (1938) 2 M.L.J. 613.
 — 304 (P.C.) Foll I.L.R. 1938 Nag 27.
 — 499 Ref. 32 S.L.R. 567.
 — 648 (P.C.) Ref. I.L.R. 1938 Nag. 382.
 — 703 Ref. I.L.R. (1938) 1 Cal. 563, Ref 42 C.W.N. 97.
 — 739 Foll. (1938) 1 M.L.J. 526.
 8 Cal 61-8 I.A. 123 (P.H.) Ref I.L.R. 1938 All. 922, 40 L.R. 38.
 — 89 Disappr. I.L.R. 1938 All. 342, Ref. I.L.R. 1938 Lah. 586, 43 P.L.R. 491.
 — 302 Ref. 40 P.L.R. 824.
 — 593 Ref. I.L.R. 1938 Mad. 1050.
 — 721 Ref. I.L.R. 1938 933.

- E Cal 756** Ref. 42 C.W.N. 667.
 — 757 Ref. I.L.R. (1938) 2 Cal. 411; 32 S.L.R. 124.
 — 766 Disc. 17 Pat. 350, Ref. 19 P.L.T. 202.
 — 809 Ref. 13 Luck. 405
9 Cal. Disc 19 P.L.T. 297.
 — 100 Ref. 19 P.L.T. 243.
 — 406 Ref. (1938) 1 M.L.J. 325, Ref. I.L.R. (1938) 2 Cal. 243
 — 616 Dist. (1938) 1 M.L.J. 450.
 — 629 Ref. 42 C.W.N. 806.
 — 633 Ref. 17 Pat. 223.
 — 663 Rel. 40 Bom L.R. 548.
 — 698 Ref. 42 C.W.N. 1102.
 — 861 Ref. 40 Bom L.R. 422.
10 Cal 374 Dist. (1938) 1 M.L.J. 113.
 — 443 Foll. I.L.R. (1938) 1 Cal. 21.
 — 549 Disappr. I.L.R. 1938 All. 342, Ref. 1938 A.L.J. 117
 — 557 Ref. 40 P.L.R. 712
 — 626 Foll. I.L.R. 1938 Nag. 1
 — 785 (P.O.) Foll. 40 Bom L.R. 900
 — 985 Appr. 1938 A.L.J. 834, Disc. I.L.R. 1938 Nag. 182
 — 1035 (P.O.) Rel. I.L.R. 1938 Lah. 155
 — 1054 Ref. 42 C.W.N. 783
 — 1097 Ref. 19 P.L.T. 164
11 Cal 111 (P.O.) Ref. 40 P.L.R. 798
 — 338 Foll. (1938) 2 M.L.J. 663.
 — 519 Dist. I.L.R. (1938) 1 Cal. 1; Ref. 42 C.W.N. 1038.
 — 539 Rel. 40 Bom L.R. 202.
12 Cal. 185 Ref. I.L.R. (1938) 1 Cal. 21.
 — 522 Not Foll. I.L.R. (1938) 2 Cal. 233.
 — 523 Cons. 42 C.W.N. 577.
 — 583 Ref. (1938) 2 M.L.J. 44
13 Cal. 3 Rel. I.L.R. 1938 Nag. 54.
 — 13 Dist. I.L.R. (1938) 1 Cal. 171; Ref. 42 C.W.N. 492.
 — 17 Rel. 40 P.L.T. 662.
 — 104 (F.B.) Dist. (1938) 2 M.L.J. 283, Ref. 42 C.W.N. 72.
 — 155 Ref. 40 P.L.R. 300.
 — 262 Ref. 1938 Rang L.R. 542.
 — 352 Ref. I.L.R. 1938 Lah. 494.
14 Cal 256 Ref. I.L.R. (1938) 1 Cal. 531=42 C.W.N. 422.
 — 365 Ref. 1938 O.W.N. 513.
 — 493 Foll. I.L.R. 1938 Nag. 1.

- 14 Cal. 633** Foll. 1938 Rang. L.R. 236
 — 636 (F.B.) Ref. I.L.R. 1938 All. 697=1938 A.L.J. 724.
15 Cal. 109 Expl. & Ref. I.L.R. 1938 Bom. 119, Ref. I.L.R. 1938 Bom 31.
 — 292 Ref. 42 C.W.N. 695, Rel. I.L.R. (1938) 2 Cal. 250.
 — 329 Appl. I.L.R. 1938 All. 35.
 — 460 Ref. 42 C.W.N. 445.
 — 533 Ref. 19 P.L.T. 645.
 — 800 Ref. 42 C.W.N. 560.
16 Cal. 40 Foll. I.L.R. 1938 Nag. 382.
 — 121 Ref. 1938 Rang L.R. 121.
 — 155 Ref. 40 Bom L.R. 447.
 — 250 Ref. 19 P.L.T. 243.
 — 355 Ref. 17 Pat. 223.
 — 619 Foll. 40 Bom L.R. 188, Ref. I.L.R. 1938 Bom. 263.
 — 758 (P.G.) Foll. 40 Bom L.R. 422.
17 Cal 301 Ref. 42 C.W.N. 967.
 — 436 (P.C.) Rel. 1938 A.L.J. 654, 32 S.L.R. 106.
 — 574 Diss. 1938 Rang. L.R. 236, Ref. 19 P.L.T. 51.
 — 580 Ref. I.L.R. (1938) 1 Cal. 531, Rel. 42 C.W.N. 422
 — 610 Ref. I.L.R. (1938)*1 Cal. 688=42 C.W.N. 270.
 — 631 (F.B.) Appr. I.L.R. 1938 Bom. 708, Diss. 40. Bom L.R. 676.
 — 826 Ref. 42 C.W.N. 832
 — 911 Foll. 42 C.W.N. 359.
 — 968 Foll. 40 Bom L.R. 324, Ref. I.L.R. 1938 Bom. 655.
18 Cal 10 (P.O.) Foll. 40 P.L.R. 95.
 — 23 (P.C.) Ref. I.L.R. 1938 Nag. 106.
 — 45 Ref. 1938 Rang L.R. 360.
 — 151 Foll. I.L.R. 1938 Nag. 255, Ref. I.L.R. 1938 Nag. 115.
 — 157 (P.G.) Foll. I.L.R. 1938 Nag. 1; Ref. I.L.R. 1938 Nag. 10.
 — 188 Ref. I.L.R. 1938 Lah. 582
19 Cal 48 Ref. I.L.R. (1938) 1 Cal. 75.
 — 139 Ref. I.L.R. 1938 All. 535=1938 A.L.J. 495.
 — 203 Ref. I.L.R. 1938 Bom. 184.
 — 380 Disc. 19 P.L.T. 297.
 — 683 Foll. I.L.R. 1938 Nag. 136, 40 P.L.R. 615.
 — 776 Ref. 42 C.W.N. 1138.

- 20 Cal 70** Ref. 40 P.L.R. 556.
 — 93 Ref. 17 Pat. 507=19 P.L.T. 309
 — 116 Ref. 40 P.L.R. 319.
 — 241 Ref. 42 C.W.N. 523.
 — 245 Dist. 40 P.L.R. 22.
 — 249 Disc. 19 P.L.T. 456.
 — 296 (P.O.) Ref. 40 P.L.R. 286.
 — 388 Foll. 40 P.L.R. 25, Ref. 17 Pat. 223.
 — 433 Ref. I.L.R. 1938 All. 761=1938 A.L.J. 715.
 — 579 Mentioned 42 C.W.N. 276.
 — 687 Rel. 42 C.W.N. 760
 — 708 Ref. 19 P.L.T. 570.
 — 762 Ref. I.L.R. (1938) 2 Cal. 411=42 C.W.N. 667.
 — 810 Ref. 1938 A.L.J. 803, I.L.R. 1938 Bom. 184, 42 C.W.N. 1018, 1938 O.W.N. 688, (1938) 2 M.L.J. 239; Rel. 40 Bom L.R. 1071.
 — 888 Ref. I.L.R. (1938) 1 Cal. 75.
21 Cal. 66 (P.O.) Ref. I.L.R. 1938 Lah. 582.
 — 177 Ref. 40 P.L.R. 92.
 — 382 Foll. I.L.R. (1938) 1 Cal. 688=42 C.W.N. 270.
22 Cal 222 Ref. I.L.R. 1938 Bom. 16, 40 P.L.R. 819, Rel. 40 Bom L.R. 77.
 — 244 Ref. 42 C.W.N. 913
 — 377 Foll. I.L.R. (1938) 1 Cal. 98.
 — 410 Foll. 40 Bom L.R. 422, Ref. I.L.R. 1938 Bom. 454.
 — 425 Dist. I.L.R. 1938 Bom. 273=40 Bom L.R. 507
 — 451 Ref. I.L.R. (1938) 1 Cal. 531=42 C.W.N. 422.
 — 467 Dist. I.L.R. (1938) 1 Cal. 171; Ref. 42 C.W.N. 492.
 — 519 Ref. 40 P.L.R. 4
 — 581 Expl. I.L.R. (1938) 1 Cal. 35.
 — 619 Ref. 1938 O.W.N. 67
 — 757 Ref. 40 P.L.R. 193.
 — 767 Ref. 1938 Rang. L.R. 176
 — 938 Foll. 17 Pat. 315.
23 Cal 44 Ref. 1938 Rang. L.R. 121.
 — 130 Not Foll. I.L.R. 1938 Mad. 278.
 — 325 Foll. 40 Bom L.R. 957.
 — 442 Ref. 42 C.W.N. 246.
 — 536 Foll. (1938) 1 M.L.J. 113; Ref. 40 P.L.R. 319.
 — 592 Ref. 1938 Rang L.R. 480.
 — 699 Not foll. 42 C.W.N. 1059.
 — 790 Ref. 42 C.W.N. 502.
 — 851 Foll. 17 Pat. 268, Ref. (1938) 1 M.L.J. 189=19 P.L.T. 579.

- 21 Cal. 884 (T.B.) Dist. 40 P.L.R.
196, Not foll. I.L.R. 1926
Lab. 341.
— 950 Ref. 13 Luck 455
— 975 Ref. I.L.R. (1935) 1
Cal. 95.
- 24 Cal. 350 (F.B.) Foll. 17 Pat
252, Ref. 19 P.L.T. 17.
— 555 Ref. 1934 A.L.J. 680.
— 584 Ref. 32 S.L.R. 577,
Ref. 32 S.L.R. 106.
— 616 (P.O.) Ref. 40 P.L.R.
128.
— 668 Ref. 1934 Rang.L.R.
162.
— 677 Ref. 40 P.L.R. 833
— 691 Dist. 19 P.L.T. 206
— 711—1 O.W.N. 365 Ref
42 C.W.N. 560.
— 832 Disap. I.L.R. 1934
Nag. 41.
— 834 (P.O.) Foll. I.L.R.
1938 Nag. 27.
— 869 Foll. 17 Pat. 241 Ref
19 P.L.T. 7.
- 25 Cal. 167 Ref. 42 C.W.N. 913.
— 231 Foll. I.L.R. 1938 Ab.
750, 1938 O.W.N. 591;
Ref. 1938 A.L.J. 565.
— 354 Ref. I.L.R. (1938) 1
Cal. 75.
— 371 Ref. 1938 Rang.L.R.
521.
— 401 Dist. 1938 Rang.L.R.
417, Ref. (1938) 2 M.L.J.
469.
— 512 Dist. 19 P.L.T. 297
— 555 Dist. I.L.R. (1938) 1
Cal. 200, Ref. 42 C.W.N.
129.
— 896 Ref. 40 Bom.L.R. 1015.
- 26 Cal. 184—3 O.W.N. 108 Ref.
42 C.W.N. 913.
— 281 Ref. 1938 Rang.L.R.
243.
— 338 Ref. I.L.R. (1938) 1
Cal. 21.
— 449—3 O.W.N. 283 Ref
42 C.W.N. 266.
— 580 Ref. 17 Pat. 369—19
P.L.T. 268.
— 593 Ref. I.L.R. 1938 Ab.
840—1938 A.L.J. 807.
— 782—3 O.W.N. 695 Ref. 42
C.W.N. 977.
- 27 Cal. 190 Foll. I.L.R. 1938
Mad. 523
— 320 Ref. 1938 Rang.L.R.
121.
— 452—4 C.W.N. 594 Dist.
42 C.W.N. 531.
— 951 Ref. I.L.R. 1938 Ab.
71; 40 P.L.R. 443.
— 1094 (P.O.) Ref. 40 P.L.R.
240.
- 28 Cal. 571 Ref. I.L.R. 1938 Ab.
789—1938 A.L.J. 689
— 689 Not Foll. 19 P.L.T.
104, Ref. I.L.R. 1938 Mad.
348.
- 29 Cal. 68 Ref. 42 C.W.N. 1058.
— 154 Foll. I.L.R. 1934 Nag.
206.
— 315 Cons. I.L.R. (1938) 1
Cal. 354, Dist. 42 C.W.N.
422, Dist. 42 C.W.N.
371, Ref. I.L.R. (1938) 1
Cal. 531.
— 355 Dist. 1938 A.L.J. 382—
I.L.R. (1938) 2 Cal. 295,
Ref. 32 L.A. 158—40 Bom.
L.R. 787—19 P.L.T. 343,
42 C.W.N. 621—(1938) 1
M.L.J. 647.
— 461 Foll. I.L.R. 1938 Nag.
308.
— 677 Dist. I.L.R. (1938) 2
Cal. 216, Ref. 42 C.W.N.
701.
— 707 Dist. 19 P.L.T. 456,
Ref. I.L.R. 1938 Ab. 184,
782—6 O.W.N. 552 Ref.
42 C.W.N. 129, Ref. I.L.R.
(1938) 1 Cal. 290.
- 30 Cal. 330 Dist. 19 P.L.T. 456.
— 369 Dist. 17 Pat. 350; Dist.
19 P.L.T. 202, Ref. I.L.R.
(1938) 1 Cal. 531.
— 394 Foll. I.L.R. 1938 Lah.
188.
— 440 Ref. 40 P.L.R. 645.
— 576 Ref. 32 S.L.R. 8
— 738 Ref. 19 P.L.T. 591
— 788 Ref. I.L.R. (1938) 2
Cal. 413.
— 801—7 O.W.N. 810 Foll.
42 C.W.N. 1191.
— 866 (P.O.) Dist. I.L.R.
1938 Nag. 308.
— 869—7 C.W.N. 353 Foll.
42 C.W.N. 422.
— 937 Dist. 1938 Rang.L.R.
611.
— 1021 (P.O.) Ref. 40 P.L.R.
403.
- 31 Cal. 83 Ref. 40 P.L.R. 571.
— 96 Ref. I.L.R. 1938 Lah.
75.
— 214 Ref. I.L.R. 1938 Ab.
904.
— 249 Ref. I.L.R. 1938 Ab.
634—1938 A.L.J. 504
— 895 Dist. 40 Bom.L.R. 418
32 Cal. 129 (P.O.) Ref. 40 P.L.R.
319.
— 296 (P.O.) Ref. 1938 A.L.
J. 235.
— 483 Ref. 13 Luck. 135.
— 667 Ref. 1938 Rang.L.R.
542.
— 605 Ref. 1938 Rang.L.R.
623.
— 643 Ref. 42 C.W.N. 967
— 654 Dist. 13 Luck. 323
— 861 Ref. 42 C.W.N. 1237.
— 1023 Reviewed 17 Pat. 358.
— 1077—9 O.W.N. 868 Ref
42 C.W.N. 18.
- 33 Cal. 180 Dist. 17 Pat. 350; 19
P.L.T. 202.
— 343 Ref. (1938) 2 M.L.J.
688.
— 857 Ref. 1938 O.W.N. 722.
— 1040 Foll. (1938) 1 M.L.J.
351.
— 1047 (P.O.) Appl. I.L.R.
1938 Lah. 193 (F.B.). Ref.
40 P.L.R. 533.
— 1110—10 O.W.N. 765 Dis.
42 C.W.N. 110.
— 1232 Ref. I.L.R. 1938 Mad.
1050.
— 1278—11 O.W.N. 107 Ref
42 C.W.N. 18.
— 1353 Ref. I.L.R. 1938 Lah.
628.
- 34 Cal. 216 Foll. I.L.R. 1938
Nag. 409.
— 403 Ref. I.L.R. (1938) 1
Cal. 213.
— 672 Foll. 1938 Rang.L.R.
35.
— 787 Ref. I.L.R. 1938 Lah.
542.
— 813 Ref. I.L.R. (1938) 1
Cal. 35.
— 854 Ref. I.L.R. 1938 Mad.
1050.
- 35 Cal. 82 Dist. 19 P.L.T. 352,
Ref. 42 C.W.N. 169
— 368 Ref. & Ref. 19 P.L.T.
504.
— 431 Dist. 1938 Rang.L.R.
56, Foll. 42 C.W.N. 888.
— 581 Ref. 19 P.L.T. 697,
777 Ref. 1938 A.L.J. 860.
— 837 Foll. 13 Luck. 35
— 996 Appr. 40 Bom.L.R. 100,
Ref. I.L.R. 1938 Bom. 107.
- 36 Cal. 28 Dist. I.L.R. (1938) 1
Cal. 476—42 C.W.N. 230
— 370 Ref. 42 C.W.N. 246.
— 433 Dist. 19 P.L.T. 208.
— 562 Dist. 1938 O.W.N. 676
— 566 Dist. (1938) 1 M.L.J.
793.
— 745 Ref. 42 C.W.N. 832
— 769 Ref. 32 S.L.R. 215.
— 896 Ref. 42 C.W.N. 246.
— 936 Dist. I.L.R. 1938 Nag.
402.
— 975—13 O.W.N. 1084 Ref.
42 C.W.N. 1138.
- 37 Cal. 67 Ref. I.L.R. (1938) 1;
Cal. 512.
— 250—14 O.W.N. 330 Dist.
42 C.W.N. 531.
— 293 Foll. I.L.R. 1938 Nag.
50.
— 467 Ref. 17 Pat. 15.
— 578 Ref. (1938) 1 M.L.J.
817.
— 604 Foll. 1938 Rang.L.R.
404.
— 885 (P.O.) Ref. & Ref. 40
P.L.R. 319.

- 57 Cal. 949 Dist. I.L.R. (1938) 2 Cal. 221=42 C.W.N. 588.
 — 853=34 O.W.N. 121 Ref. 42 C.W.N. 832.
 — 964=31 C.W.N. 238 Ref. 42 C.W.N. 266.
 — 1013 (F.B.) Foll. 40 Bom. L.R. 164.
 — 1101=34 C.W.N. 570 Foll. 42 C.W.N. 971.
 — 1143 Ref. 42 C.W.N. 1183.
 — 1210=A.I.R. 1930 Lah. 459 Ref. 40 P.L.R. 669
 — 1228 Dist. I.L.R. (1938) 1 Cal. 98.
 — 1336 Ref. 1938 Rang L.R. 130
 58 Cal. 1111 Ref. I.L.R. 1938 Mad. 1031
 — 174 Ref. 1938 Rang L.R. 611
 — 215 Ref. I.L.R. 1938 Lah. 188.
 — 281 Ref. I.L.R. (1938) 1 Cal. 196.
 — 402 Reviewed. 19 P.L.T. 21.
 — 539 Dist. 42 C.W.N. 422; Ref. I.L.R. (1938) 1 Cal. 531.
 — 628 Foll. 1938 O.W.N. 475.
 — 752 Ref. 40 Bom. L.R. 964.
 — 788 Ref. 17 Pat. 189.
 — 850 Ref. 32 S.L.R. 67.
 — 897 Ref. (1938) 1 M.L.J. 670.
 — 1148 Ref. I.L.R. 1938 All. 363=1938 A.L.J. 252, 1938 O.W.N. 318
 — 1285 Ref. 19 P.L.T. 594.
 — 1341 Dist. I.L.R. 1938 All. 350, Ref. 1938 A.L.J. 159.
 59 Cal. 8 Ref. I.L.R. (1938) 1 Cal. 290, Ref. 42 C.W.N. 129
 — 68 Diss. I.L.R. 1938 Bom. 331=40 Bom. L.R. 297, 19 P.L.T. 21.
 — 78 Ref. 42 C.W.N. 502.
 — 117 Ref. I.L.R. 1938 Lah. 97, 19 P.L.T. 383, 40 P.L.R. 509.
 — 156 Ref. 19 P.L.T. 658
 — 205=A.I.R. 1932 Cal. 189 Ref. 40 P.L.R. 303.
 — 337=35 C.W.N. 1294 Foll. 42 C.W.N. 152, Ref. I.L.R. 1938 Lah. 571.
 — 377 Ref. I.L.R. 1938 All. 896
 — 388 Foll. I.L.R. 1938 Nag. 106, Ref. 42 C.W.N. 72, 13 Luck. 397.
 — 578 Affirm. & Foll. 19 P.L.T. 169, Ref. I.L.R. 1938 Nag. 115.
 — 636 Ref. 40 P.L.R. 591.
 — 781 Ref. I.L.R. 1938 Nag. 409, Ref. 1938 Rang. L.R. 316, 19 P.L.T. 309=17 Pat. 507.
 59 Cal. 911 Foll. (1938) 1 M.L.J. 146, Ref. I.L.R. 1938 Mad. 533.
 — 961 Ref. 32 S.L.R. 567.
 — 1057 Foll. 40 Bom. L.R. 957
 — 1080 Dist. 42 C.W.N. 1068 Ref. I.L.R. (1938) 2 Cal. 523.
 — 1165 Foll. I.L.R. (1938) 2 Cal. 144.
 — 1202 Ref. I.L.R. (1938) 1 Cal. 164.
 — 1226 Ref. I.L.R. 1938 Mad. 25.
 — 1289 Dist. I.L.R. (1938) 1 Cal. 476=42 C.W.N. 230.
 — 1314 Foll. I.L.R. 1938 Nag. 268; Not Foll. 17 Pat. 499, Ref. I.L.R. (1938) 1 Cal. 21.
 — 1334 Diss. 17 Pat. 252=19 P.L.T. 17.
 — 1343 Ref. I.L.R. 1938 All. 691
 — 1372 Ref. 1938 Rang L.R. 542
 — 1399 (P.O.) Ref. I.L.R. 1938 Lah. 47
 — 1475 Ref. I.L.R. (1938) 2 Cal. 14
 60 Cal. 54 Ref. 42 C.W.N. 469
 — 138 Mentioned 42 C.W.N. 276.
 — 421 Ref. 32 S.L.R. 32
 — 427 Ref. I.L.R. (1938) 1 Cal. 290, Ref. 42 C.W.N. 129.
 — 431=37 C.W.N. 450 Ref. 42 C.W.N. 994.
 — 538=37 C.W.N. 181 Ref. 42 C.W.N. 345.
 — 581=37 C.W.N. 231 Ref. 42 C.W.N. 661.
 — 670=A.I.R. 1933 P.C. 61 Foll. 40 P.L.R. 857.
 — 701 Ref. I.L.R. 1938 Nag. 50
 — 783 Dist. I.L.R. 1938 Nag. 308.
 — 820 Ref. I.L.R. 1938 Nag. 115.
 — 918 Ref. I.L.R. (1938) 1 Cal. 531=42 C.W.N. 422.
 — 1207 Expl. I.L.R. (1938) 2 Cal. 103
 — 1236 Disc. I.L.R. 1938 Nag. 182
 — 1265 Foll. I.L.R. 1938 Nag. 344.
 — 1287=37 C.W.N. 1009 Ref. 42 C.W.N. 913.
 — 1401 Criticised I.L.R. (1938) 1 Cal. 280
 61 Cal. 72 Disc. 19 P.L.T. 456.
 — 119 Ref. I.L.R. (1938) 1 Cal. 652
 — 148 Foll. I.L.R. 1938 All. Ref. 1938 A.L.J. 558
 61 Cal. 168=A.I.R. 1933 Cal. 800 Appr. 40 P.L.R. 870.
 — 324 Ref. I.L.R. (1938) Mad. 12.
 — 433 Ref. I.L.R. 1938 Mad. 933; 1938 Rang. L.R. 521.
 — 450 Ref. I.L.R. (1938) 1 Cal. 476
 — 470 Ref. I.L.R. 1938 All. 823.
 — 607 (F.B.) Expl. & Dist. (1938) 1 M.L.J. 238, Foll. 32 S.L.R. 185
 — 663 Ref. (1938) 1 M.L.J. 514.
 — 670 Ref. (1938) 1 M.L.J. 873.
 — 694=A.I.R. 1935 Cal. 17 Ref. 40 P.L.R. 447.
 — 796 Ref. I.L.R. (1938) 1 Cal. 196
 — 814 Ref. 17 Pat. 89=19 P.L.T. 372.
 — 841 Appr. I.L.R. 1938 All. 288=1938 A.L.J. 66, Diss. 42 C.W.N. 1212
 — 879 Appr. I.L.R. 1938 All. 350, Ref. 19 Pat. J.T. 398.
 — 975 Ref. 40 P.L.R. 456.
 — 980=38 C.W.N. 898 Ref. I.L.R. (1938) 1 Cal. 146.
 — 1028 Ref. I.L.R. (1938) 1 Cal. 531=42 C.W.N. 422
 — 1041 Diss. I.L.R. (1938) 1 Cal. 400=I.L.R. 1938 Nag. 149.
 62 Cal. 175 Modified 19 P.L.T. 125 (P.C.); Ref. 42 C.W.N. 1004.
 — 201 Foll. 40 Bom. L.R. 952.
 — 213 Diss. 1938 Rang. L.R. 371; Ref. (1938) 2 M.L.J. 44
 — 257 Ref. (1938) 1 M.L.J. 487.
 — 312 Not Foll. 19 P.L.T. 104.
 — 337 Ref. 42 C.W.N. 129.
 — 377 Foll. I.L.R. (1938) 1 Cal. 290
 — 457 Ref. I.L.R. 1938 Mad. 1063.
 — 492 Ref. 1938 Rang. L.R. 216.
 — 510 Foll. 40 Bom. L.R. 995.
 — 629 Dist. (1938) 1 M.L.J. 670.
 — 655 Ref. 40 P.L.R. 767.
 — 659 Ref. 1938 Rang L.R. 166.
 — 677 Foll. I.L.R. 1938 Nag. 206.
 — 711 Disc. & Not Foll. 19 P.L.T. 8; Ref. 1938 Rang. L.R. 629
 — 918=39 C.W.N. 488 Diss. 42 C.W.N. 620.
 — 928 Diss. I.L.R. (1938) 1 Cal. 98
 — 946 Ref. I.L.R. (1938) 1 Cal. 538.

62 Cal 956-23 C.W.N. 6201-1
42 C.W.N. 129
— 909 Dist 13 La 1, 181
— 1011 Dist 11 La (1933) 1
Cal 476, 1-42 C.W.N.
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— 1062 Dist 11 La (1933) 1
Cal 531, Pat A 1936 42
C.W.N. 422
— 1035-59 C.W.N. 1114
1-42 C.W.N. 1772
— 578 Cal 578 Dist 11 La 1938
Nag 91
— 523 Dist 11 La 1938
(1935) 1 Cal 578-42 C.W.
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— 528 Dist 42 C.W.N. 455
— 522 1-42 C.W.N. (1935)
1 Cal 440
— 733 Dist 42 P.L.R. 235,
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— 597 Dist 11 La (1933) 1
Cal 75
— 1005 Dist 1938 1 M.L.J.
17
— 1112 Dist 11 La (1935) 1
Cal 98
— 1117 Expt & Dist. 11 La
(1938) 1 Cal 164
— 1172 Not Appr 11 La 1938
All 258, Dist 1938 A.L.J.
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— 1203 Ref. 11 La (1935) 1
Cal 35
I L R (1937) 1 Cal 306 Ref
11 La (1935) 1 Cal 290
Ref 42 C.W.N. 129
— 610 Laj. 1 La 1938) 1
Cal 672
— 637 Ref 11 La 1938 La
571
— 653 Ref. 1938 Rang L.R.
130
— 781 Appr. 11 La (1938) 2
Cal. 30, Ref. & Expt. 11 La.
(1938) 1 Cal 121.
I L R (1937) 2 Cal 201 Diss &
Not Foll 11 La 1938 Mad
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— 211 Diss 11 La (1938) 1
Cal 35
— 315 Diss 11 La. (1938) 1
Cal 290.
— 472 Ref 11 La. (1938) 2
Cal 155
— 625-41 C.W.N. 924 Foll.
11 La (1938) 1 Cal 345.
I L R (1938) 1 Cal 256 Ref. 11
La (1938) 2 Cal 155
— 345 Foll. 11 La (1938) 1
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— 597 Ref. 11 La (1938) 2
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— 626 Ref 11 La. (1938) 2
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I L R. (1938) 2 Cal 165 Ref
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2 C.W.N. 723 Ref 191 L.T. 274
— 122 1-42 C.W.N. 17 Pat 359
— 197 C.W.N. 42 C.W.N. 339
— 263 Dist. (1935) 1 M.L.J.
84
— 2611 Dist 11 La 1938 La.
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— 637 Dist 17 Pat 359.
3 C.W.N. 623 Ref 42 C.W.N. 97.
— 271 Dist. 42 C.W.N. 334
— 735 Dist 11 La. (1935) 1
Cal 75
4 C.W.N. 2081 Ref 42 C.W.N. 649
— 2101-42 C.W.N. 1079
— 2591-42 C.W.N. 1059
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— 207 A.L.J. 11 La 1938 Mad
(1938) 1 M.L.J. 285;
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— 497 Ref. 42 C.W.N. 967.
6 C.W.N. 202 Cons 1938 Rang La
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— 218 Foll. 42 C.W.N. 548,
Ref. 11 La. (1935) 2 Cal
320
— 409 Ref 40 P.L.R. 443
— 791 Ref 42 C.W.N. 967
7 C.W.N. 105 Ref 11 La (1938)
1 Cal 512
— 457 Dist 11 La 1938 Nag
244
— 506 Dist 11 La (1938) 1
Cal 1.
8 C.W.N. 359 Ref. 11 La. 1938
Nag. 21
9 C.W.N. 474 Ref 17 Pat 369-
19 P.L.T. 268.
— 584 Ref. 11 La. 1938 La
75.
— 663 Dist 17 Pat 398, Ref
19 P.L.T. 519.
10 C.W.N. 432 Dist. 11 La (1938)
1 Cal 75
— 535 Dist 17 Pat 191
— 564 Not Foll (1938) 1 M.L.
J. 728.
— 847 Ref 11 La. 1938 La.
628.
11 C.W.N. 212 Dist. 19 Pat L.T.
555
— 314 Ref. 42 C.W.N. 721.
— 403-5 O.L.J. 315 Ref 42
C.W.N. 721.
— 705 Ref. 11 La (1938) 1
Cal 187.
12 C.W.N. 241 Diss 11 La. (1938)
1 Cal 400, 1938 Rang L.R.
623, Ref. 42 C.W.N. 212.
— 312 Ref. 11 La (1938) 1
Cal 53.
— 528 Ref. 42 C.W.N. 913.
13 C.W.N. 307 Ref. 42 C.W.N.
913.

13 C.W.N. 250 Ref. 1918 O.W.N.
431 Appr. 11 La. 1938 All.
513, Dist. 1938 A.L.J. 313.
— 388 Ref. 13 La 1 475.
— 533 Ref. 42 C.W.N. 266.
14 C.W.N. 12 Ref. 1938 Rang L.
R. 102
— 96 Ref (1938) 2 M.L.J. 769.
— 463 Dist. 11 La. (1935) 1
Cal 75
— 752 Foll. 1938 O.W.N. 450.
— 932 Ref. 11 La. (1938) 2
Cal 411-42 C.W.N. 667;
1-42 C.W.N. 1938 Nag 106
— 971-12 O.L.J. 101 Ref 42
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15 C.W.N. 766 Ref. 42 C.W.N.
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16 C.W.N. 50 Ref 42 C.W.N.
1174
— 252-14 O.L.J. 467 Ref. 42
C.W.N. 359
— 327 Dist 1938 Rang L.R.
623; Ref. 11 La. (1938) 1
Cal 400-42 C.W.N. 212
— 347 Foll 42 C.W.N. 1038.
— 567 Dist. 19 P.L.T. 555
— 715 Foll 17 Pat 400, Ref
19 P.L.T. 594
— 731 Foll 42 C.W.N. 1170
17 C.W.N. 73 Ref 42 C.W.N.
445
— 238 Ref 19 P.L.T. 542
— 625 Foll 11 La (1938) 1
Cal 413
— 833 Ref 42 C.W.N. 334
18 C.W.N. 448 Ref 11 La (1938)
1 Cal 607-42 C.W.N. 38
— 466 Dist 19 P.L.T. 456
— 539 Ref. 42 C.W.N. 485.
— 598 Ref 19 P.L.T. 658
— 617 Ref. 19 P.L.T. 579
— 920 Foll 11 La 1938 All
125, Ref 1938 A.L.J. 23.
— 1136 Foll. (1938) 1 M.L.J.
146; Ref 11 La 1938 Mad
533
— 1325 Ref. 42 C.W.N. 883;
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482
19 C.W.N. 64 Ref. 11 La 1938
Mad 12
— 614 Foll. (1938) 2 M.L.J.
402.
— 1197 Ref 11 La (1938) 1
Cal 21.
— 1295 Ref. 42 C.W.N. 649.
20 C.W.N. 149 Ref. 11 La. (1938)
1 Cal 607-42 C.W.N. 38.
— 151 (P.C.) Ref 42 C.W.N.
345
— 350 Ref. 19 P.L.T. 95
— 523 Appr 19 P.L.T. 250
— 749 Ref 42 C.W.N. 967.
— 789 Diss. 1938 Rang L.R.
586
— 957 Ref 11 La (1938) 2
Cal 328
— 833 (P.C.) Foll 11 La
1938 Mad 586
— 1005 Ref 42 C.W.N. 771

- 21 C.W.N. 88 Ref. 42 C.W.N. 721.
 —117 Ref. 42 C.W.N. 761.
 —344 Cons. I.L.R. (1938) 1 Cal. 509=42 C.W.N. 64.
 —375 Ref. I.L.R. (1938) 2 Cal. 411=42 C.W.N. 667.
 —427 Dist. 17 Pat. 150.
 —482=25 M.L.J. 238 Dist. 42 C.W.N. 18.
 —514 Diss. 42 C.W.N. 152, 1938 Rang.L.R. 635.
 —620 Ref. (1938) 1 M.L.J. 610.
 —688 Ref. 19 P.L.T. 485.
 —835 Ref. 13 Luck. 162.
 —1129 Foll. I.L.R. (1938) 1 Cal. 75.
- 22 W.N. 89 Ref. 42 C.W.N. 304.
 —163 Dist. I.L.R. (1938) 2 Cal. 221=42 C.W.N. 588.
 —278 Disc. I.L.R. 1938 All. 288=1938 A.L.J. 66.
 —522 Ref. I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
 —540 Concur. 40 Bom. L.R. 676.
 —657 Dist. 42 C.W.N. 188.
 —713 Ref. I.L.R. (1938) 2 Cal. 507.
 —760 Ref. I.L.R. (1938) 1 Cal. 512.
 —804 Ref. 42 C.W.N. 637.
- 23 O.W.N. 91 Ref. 42 C.W.N. 445.
 —233 Ref. I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
 —769 Rel. I.L.R. (1938) 2 Cal. 275.
- 24 W.N. 463 Ref. I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
 —599 Ref. I.L.R. (1938) 1 Cal. 187.
 —762 Diss. 13 Luck. 344 Ref. I.L.R. (1938) 1 Cal. 652.
 —879 Ref. 42 C.W.N. 806.
 —1001 Dist. I.L.R. (1938) 1 Cal. 635.
- 25 C.W.N. 204 Mentioned 42 C.W.N. 276.
 —220 Rel. I.L.R. (1938) 1 Cal. 563, Ref. 42 C.W.N. 97.
 —555 Ref. 1938 Rang.L.R. 580.
 —768 Rel. I.L.R. (1938) 2 Cal. 411, Ref. 42 C.W.N. 667.
 —813 Ref. 40 P.L.R. 300, Ref. 13 Luck. 323.
 —847 Rel. (1938) 1 M.L.J. 574.
 —905 Ref. 42 C.W.N. 38.
- 26 C.W.N. 406 (P.O.) Ref. (1938) 1 M.L.J. 574.
 —495 Ref. 19 P.L.T. 202.
 —514 Ref. 42 C.W.N. 1212.
 —587 Affirm. 39 C.L.J. 347; Ref. 42 C.W.N. 445.
- 26 C.W.N. 771 (P.O.) Dist. 17 Pat. 499, Foll. I.L.R. 1938 Nag. 268.
 —845 Ref. 42 C.W.N. 507.
 —910 Ref. 42 C.W.N. 367.
- 27 C.W.N. 159 Ref. I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
 —174 Ref. 42 C.W.N. 345.
 —208 Ref. 42 C.W.N. 497.
 —210 Rel. I.L.R. 1938 Nag. 283.
 —542 Ref. 42 C.W.N. 375, (1938) 1 M.L.J. 193.
 —710 Ref. I.L.R. 1938 Mad. 275= (1938) 1 M.L.J. 54.
 —740 Ref. 19 P.L.T. 309.
 —897 Ref. 42 C.W.N. 107.
- 28 C.W.N. 20 Ref. I.L.R. (1938) 1 Cal. 512.
 —23 Appl. 19 P.L.T. 542.
 —92 Ref. 42 C.W.N. 1065.
 —170 Ref. I.L.R. (1938) 1 Cal. 636.
 —755 Rel. I.L.R. (1938) 2 Cal. 22 Cons. 42 C.W.N. 316.
 —899 Ref. 42 C.W.N. 1011.
- 29 C.W.N. 112=A.I.R. 1924 P.C. 44 Ref. 40 Bom. L.R. 1041.
 —148 Ref. I.L.R. 1938 Nag. 151.
 —496 Ref. I.L.R. (1938) 2 Cal. 320.
 —627 Dist. 42 C.W.N. 192.
- 30 C.W.N. 380 Dist. 42 C.W.N. 588.
 —415 Ref. 42 C.W.N. 469.
 —518 Ref. 42 C.W.N. 1153.
- 31 C.W.N. 184 Ref. 42 C.W.N. 1138.
 —252 (P.O.) Rel. 42 C.W.N. 359.
 —290 Ref. 19 P.L.T. 11d.
 —318 Ref. 42 C.W.N. 630.
 —358 Dist. 42 C.W.N. 92.
 —1031-N. Expt. I.L.R. (1938) 1 Cal. 531=42 C.W.N. 422.
- 32 C.W.N. 112 Ref. 42 C.W.N. 1059.
 —117 Dist. 13 Luck. 230.
 —133 Cons. 42 C.W.N. 359.
 —160 Ref. I.L.R. 1938 Mad. 888.
 —208 Rel. I.L.R. (1938) 1 Cal. 531.
 —372 Ref. 17 Pat. 507=19 P.L.T. 309.
 —454 Cons. 42 C.W.N. 519.
 —778 Ref. 42 C.W.N. 913.
 —1160 Ref. 42 C.W.N. 47.
- 33 C.W.N. 100 Ref. 42 C.W.N. 721.
 —392 Ref. 42 C.W.N. 612.
 —458=49 C.L.J. 398 Expt. 42 C.W.N. 27.
 —629 Dist. 42 C.W.N. 334.
 —715 Ref. 42 C.W.N. 1030.
- 33 C.W.N. 1058 Ref. 19 P.L.T. 51.
 —1211 Ref. 13 Luck. 209.
- 34 C.W.N. 80 Ref. 42 C.W.N. 586.
 —177 Foll. 42 C.W.N. 1138.
 —250 Ref. 42 C.W.N. 286.
 —702 Ref. 42 C.W.N. 967.
 —761 Rel. & Dist. 42 C.W.N. 65.
 —1107 Foll. I.L.R. (1938) 2 Cal. 368.
- 35 C.W.N. 53 Disc. I.L.R. (1938) 1 Cal. 450.
 —188 Dist. 1938 Rang.L.R. 143.
 —953 (P.O.) Disc. 17 Pat. 350.
 —768 Ref. 42 C.W.N. 1138.
 —974 Ref. 42 C.W.N. 215.
 —987 Ref. 1938 Rang.L.R. 166.
 —1047 Ref. 19 P.L.T. 553.
 —1298=54 C.L.J. 293 Ref. 42 C.W.N. 1032.
- 36 C.W.N. 4 (P.O.) Dist. 17 Pat. 154=19 P.L.T. 500.
 —121 Rel. I.L.R. (1938) 2 Cal. 103; Ref. 42 C.W.N. 591.
 —149 Reviewed 17 Pat. 358.
 —238 Ref. 42 C.W.N. 560.
 —414 Rel. 42 C.W.N. 461.
 —487 Rel. 42 C.W.N. 18.
 —693 Ref. 13 Luck. 246.
 —847 Obiter & Not Foll. I.L.R. (1938) 2 Cal. 418=42 C.W.N. 793.
 —881 Ref. 42 C.W.N. 457.
- 37 C.W.N. 1 (P.O.) Dist. 42 C.W.N. 443, Foll. 42 C.W.N. 1115.
 —18 Ref. 42 C.W.W. 1102.
 —272 Criticised 42 C.W.N. 832.
 —321 (P.O.) Ref. 17 Pat. 507.
 —327 Ref. 19 Pat.L.T. 309, t.
 —360 Foll. I.L.R. 1938 All.
 —681=1938 A.L.J. 531.
 —395 Ref. 42 C.W.N. 345.
 —473 Ref. 13 Luck. 450.
 —655 Ref. I.L.R. 1938 Mad. 729, (1938) 1 M.L.J. 821.
 —758 Ref. 40 Bom.L.R. 188.
 —843 Expt. 42 C.W.N. 391.
 —897 Ref. 42 C.W.N. 721=42 C.W.N. 1065.
 —901 Rel. 17 Pat. 189.
 —1033=58 C.L.J. 76 Foll. 42 C.W.N. 992.
- 38 C.W.N. 43 Ref. 42 C.W.N. 87.
 —100 Ref. 42 C.W.N. 1065.
 —141 Foll. 42 C.W.N. 748.
 —433 Ref. 42 C.W.N. 188.
 —459 Foll. I.L.R. (1938) All. 144=42 C.W.N. 461.
 —500 Ref. 42 C.W.N. 647.
 —569 Ref. 42 C.W.N. 315.
 —654 Foll. 42 C.W.N. 288.
 —729 Ref. 42 C.W.N. 230.

31 C.W.N. 762 Foll. 42 C.W.N. 1115
 — 761 Dist. I.L.R. (1938) 2
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 — 858 Appr. 42 C.W.N. 55
 — 844 Foll. 42 C.W.N. 212
 — 869 Dist. 42 C.W.N. 1095
 — 101 I.L.R. (1935) 2 Cal
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 — 1112 Dist. I.L.R. (1934) 1
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 — 1171 Appr. I.L.R. (1935) 2
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 — 1178 1st 42 C.W.N. 1095
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32 C.W.N. 101 Dist. 42 C.W.N. 169
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 — 567 Foll. 42 C.W.N. 492
 — 651 Foll. 40 P.L.R. 712
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 — 630 1st 42 C.W.N. 110
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 — 744 1st 1935 Rang L.R.
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 — 888 Dist. I.L.R. (1934) 1
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 — 971 Ref. 42 C.W.N. 647.
 — 1188, 1189 Dist. I.L.R.
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 — 1225 Foll. 17 Pat. 268, Ref
 19 Pat. L.T. 579
 — 1301 Dist. I.L.R. (1935) 2
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40 C.W.N. 57 Ref. 42 C.W.N. 721.
 — 166 Ref. 42 C.W.N. 1030.
 — 208—62 O.L.J. 480 Foll.
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 — 406 Expl. & Dist. (1938) 1
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 — 511 Ref. 42 C.W.N. 270
 — 566 Ref. 42 C.W.N. 96
 — 569 Foll. 42 C.W.N. 992
 — 580 Dist. I.L.R. (1938) 2
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 — 974 Ref. I.L.R. 1938 Bom
 735—40 Bom L.R. 929.
 — 1065 Ref. 42 C.W.N. 266.
 — 1104 Appr. I.L.R. (1938) 2
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 — 1164 Ref. 1938 Rang L.R.
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 — 1180 Diss. 1938 Rang L.R.
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 — 1211 Ref. 42 C.W.N. 154
 — 1229 Foll. (1938) 1 M.L.J.
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 — 1264 Dist. 42 C.W.N. 188.
 — 1281 Foll. I.L.R. 1938 Mad
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 — 1374 Dist. I.L.R. (1938) 1
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 — 65 Dist. 42 C.W.N. 1.
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 — 85 1st I.L.R. (1935) 1
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 — 149 O's et al. Not Foll. I.L.
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 — 441 Mentioned 42 C.W.N.
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 — 968 (P.O.) Ref. 42 C.W.N.
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 — 1008 Ref. 42 C.W.N. 1212
 — 1020 Ref. 42 C.W.N. 129
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 — 1221 Ref. 42 C.W.N. 1219
 — 1253 (P.O.) Ref. 42 C.W.N.
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 — 1301 Ref. 42 C.W.N. 212
 — 1307 Dist. 42 C.W.N. 414;
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 — 81 Ref. 42 C.W.N. 239.
 — 123 Foll. I.L.R. 1938 Mad
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 — 172, 173 Ref. I.L.R. (1938)
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 — 481 Ref. 42 C.W.N. 1216
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5 O.L.J. 188 Ref. 42 C.W.N. 1174
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 — 538 Mentioned 42 C.W.N.
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6 O.L.J. 134 Dist. I.L.R. 1938
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 — 398 Ref. 17 Pat. 338, Dist.
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 — 490 Diss. I.L.R. 1935 Nag
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9 O.L.J. 116 Dist. I.L.R. (1938)
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10 O.L.J. 499 Foll. 42 C.W.N.
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11 O.L.J. 2 Ref. (1938) 2 M.L.J.
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 — 543 Ref. I.L.R. (1938) 1
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12 O.L.J. 312 Ref. 40 Bom.L.R.
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13 O.L.J. 139 Ref. 13 Luck. 334
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 — 544 Dist. I.L.R. (1938) 1
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- 16 **L.J.** 217 Ref. I L.R. (1938) 1 Cal. 607.
 — 385 Dist. 17 Pat. 150
- 17 **O.L.J.** 66 Dist I L.R. (1938) 1 Cal. 75
 — 75 Foll. I L.R. 1938 All. 252
 — 372 Dist 42 C.W.N. 378
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- 18 **C.L.J.** 29 Ref. 42 C.W.N. 967.
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- 19 **O.L.J.** 251 Foll. I L.R. (1938) 1 Cal. 413
 — 614 Cons I L.R. (1938) 2 Cal. 41
- 20 **O.L.J.** 107 Ref 42 C.W.N. 637
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- 22 **O.L.J.** 404 Ref (1938) 2 M.L.J. 623
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- 24 **O.L.J.** 60 Ref 42 C.W.N. 913.
 — 88 Ref (1938) 1 M.L.J. 610.
- 27 **O.L.J.** 96 Ref (1938) 2 M.L.J. 76
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- 28 **M.L.J.** 4 Ref 42 C.W.N. 345.
 — 197 Foll (1938) 1 M.L.J. 806.
 — 271 Ref I L.R. (1938) 1 Cal. 75
- 29 **O.L.J.** 44 Ref 19 P.L.T. 485
- 30 **O.L.J.** 56 Ref (1938) 1 M.L.J. 298.
 — 118 Expl. 17 Pat. 128, Ref 19 Pat.L.T. 428.
 — 522 Foll. I L.R. 1938 All. 192.
- 31 **C.L.J.** 485 Ref. 32 S.L.R. 106.
- 32 **O.L.J.** 77 Ref. 42 C.W.N. 334.
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 — 256 Ref. 32 S.L.R. 106.
- 33 **M.L.J.** 382 Ref. I L.R. (1938) 1 Cal. 75.
- 34 **O.L.J.** 319 Ref. 42 C.W.N. 1102.
- 35 **O.L.J.** 14 Dist 42 C.W.N. 866; Ref I L.R. (1938) 2 Cal. 41
 — 78 Ref. (1938) 1 M.L.J. 769.
 — 146 Diss. I L.R. (1938) 2 Cal. 559.
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- 36 **M.L.J.** 124 Dist. 42 C.W.N. 403
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- 36 **C.L.J.** 205 Disappr. I L.R. 1938 All. 922; Ref. I L.R. (1938) 1 Cal. 512.
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 — 373 Foll. I L.R. 1938 Mad. 523.
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- 37 **C.L.J.** 538 Expl 42 C.W.N. 832.
- 38 **O.L.J.** 114 Foll. I L.R. 1938 Mad 523.
- 39 **C.L.J.** 40 Ref. I L.R. (1938) 2 Cal. 411=42 C.W.N. 667
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 — 522 Diss. I L.R. (1938) 2 Cal. 345; Ref 42 C.W.N. 612;
 — 585 Reviewed 17 Pat. 358.
- 40 **O.L.J.** 160 Ref. I L.R. (1938) 2 Cal. 411=42 C.W.N. 667.
- 41 **O.L.J.** 142 Ref I L.R. (1938) 2 Cal. 221.
 — 607 Dist. 42 C.W.N. 1170, Foll. 42 C.W.N. 838
- 43 **O.L.J.** 83 Ref. 19 P.L.T. 594.
- 44 **C.L.J.** 475 Ref. 42 C.W.N. 18
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- 49 **O.L.J.** 12 Ref I L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
 — 83 Ref. 42 C.W.N. 832.
 — 538 Diss. 17 Pat. 84.
- 50 **C.L.J.** 181 Dist. I L.R. (1938) 2 Cal. 221=42 C.W.N. 588
 — 307 Ref. I L.R. (1938) 2 Cal. 14; 42 C.W.N. 457.
- 51 **O.L.J.** 26 Ref. 19 P.L.T. 570
- 52 **O.L.J.** 365 Ref. 42 C.W.N. 677, (1938) 1 M.L.J. 334.
- 53 **O.L.J.** 526 Dist. 42 C.W.N. 994
- 54 **O.L.J.** 220 Ref 42 C.W.N. 107.
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 — 596 Ref. 17 Pat. 189
- 55 **O.L.J.** 82 Ref 17 Pat. 223.
 — 107 Foll. 1938 Rang.L.R. 102.
- 56 **O.L.J.** 185 Ref. 42 C.W.N. 422
- 58 **O.L.J.** 38 Ref I L.R. (1938) 1 Cal. 231.
- 59 **O.L.J.** 44 Ref. 19 P.L.T. 119
- 61 **C.L.J.** 548 Ref I L.R. (1938) 1 Cal. 164=2 C.W.N. 755
- 62 **O.L.J.** 117 Ref 42 C.W.N. 975
 — 152 Diss I L.R. (1938) 2 Cal. 418, Ref. 42 C.W.N. 793.
- 64 **O.L.J.** 558 Foll I L.R. (1938) 1 Cal. 607.
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- 65 **C.L.J.** 583 Dist 42 C.W.N. 866.
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- BENGAL LAW REPORTS**
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- 3 Beng L.R. 31 (F.B.) Ref. (1938) 1 M.L.J. 710.
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- 4 Beng L.R. 11 Foll. 1938 A.L.J. 955, Ref. I L.R. 1938 All. 922.
 — 134 Ref. 40 P.L.R. 319.
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- 8 Beng L.R. 433 Appl. 40 Bom. L.R. 658.
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 — 405 Ref. I L.R. (1938) 1 Cal. 187; I L.R. 1938 Mad 933.
- 12 Beng L.R. 90 Foll. I L.R. 1938 Nag. 1.
- 13 Beng L.R. 383 Ref. I L.R. (1938) 2 Cal. 233, 42 C.W.N. 577.
- 15 Beng L.R. 142 Disc. I L.R. 1938 Nag. 382.
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- 21 Beng L.R. 558 Foll. 13 Luck 1.

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- (1864) W.R. 185 Ref 65 I.A. 119; (1935) 1 M.L.J. 458=I L.R. 1938 All. 314, Ref. 40 Bom.L.R. 735.
- 1 W.R. 321 Dist. 17 Pat. 398, Ref. 19 P.L.T. 519
 — 351 (F.B.) Ref 42 C.W.N. 300
- 5 W.R. (Gr.) 110 Ref. 42 C.W.N. 129
 — (P.O.) 98 Ref. 13 Luck. 65.
- 6 W.R. 189 Ref. 19 P.L.T. 519.
 — 303 Disc. I L.R. 1938 Nag. 182.
- 7 W.R. (F.B.) 377 Ref. 65 I.A. 219, 13 Luck. 494.
- 8 W.R. 62 Ref. 42 C.W.N. 913.
 — 171 Expl 42 C.W.N. 391; Foll I L.R. (1938) 2 Cal. 103.
- 9 W.R. 152 Foll. (1938) 2 M.L.J. 822.

9 W.R. 239 G.L.R. 1938 Nag
54
— 505 Fed. 42 C.W.N. 1207
— 520 Fed. 32 S.L.R. 172
10 W.R. 15 Fed. 42 C.W.N. 917
— 229 F.L.R. 1938 Nag
154
— 121 Fed. 17 Pat. 325, Ref.
19 P.L.T. 519
12 W.R. (Cr.) 25-4 B.L.R. 72
(O.J.) Ref. (1938) M.L.J.
1, 511
— 223 Ref. (1938) M.L.J. 73
— 185 Fed. 17 Pat. 358
— 518 Dist. (1938) 2 M.L.J.
1072
14 W.R. (Cr.) 173 Ref. I.L.R.
(1938) 1 Cal. 511
— 174 Ref. 42 C.W.N. 97
15 W.R. 274 Review 17 Pat.
358
— 285 Fed. 13 Lark. 609
— 531 Fed. 42 C.W.N. 908
16 W.R. P.C. 4 Ref. (1938)
1, 11-1, 13
— 37 Fed. 42 C.W.N. 31
17 W.R. 275 Ref. 40 P.L.R. 64.
— 509 Ref. 42 C.W.N. 97.
18 W.R. 59 (Cr.) Ref. I.L.R.
(1938) 1 Cal. 290; 42 C.W.
N. 129.
— 91 Fed. 42 C.W.N. 1191.
— 163 Ref. 40 P.L.R. 556
(P.C.) 166 Ref. 42 C.W.N.
1059
— (P.C.) 185 Ref. 40 P.L.R.
243
19 W.R. 69 Ref. 42 C.W.N. 31.
— (P.C.) 315 Disc. I.L.R.
1938 Mad. 609
21 W.R. 1 Ref. I.L.R. 1938 Mad.
933.
22 W.R. 29 Ref. 42 C.W.N. 913.
— 231 Ref. 42 C.W.N. 359
23 W.R. 52 Foll. I.L.R. 1938 Nag.
21, Ref. 19 P.L.T. 511
24 W.R. (Cr.) 30 Ref. I.L.R.
(1938) 1 Cal. 293
24 W.R. (Cr.) 41 Ref. 1938
Rang. L.R. 121.

CALCUTTA LAW REPORTS.

1 C.L.R. 21 Ref. 32 S.L.R. 185.
2 C.L.R. 323 Ref. I.L.R. (1938) 1
Cal. 21.
[1878] 3 C.L.R. 285 Ref. I.L.R.
(1938) 1 Cal. 21.
4 C.L.R. 92 Ref. & Ref. I.L.R.
1938 All. 236, 1938 A.L.J.
113.
— 105 Dist. I.L.R. (1938) 1
Cal. 290, Ref. 42 C.W.N.
129.
5 C.L.R. 253 Ref. I.L.R. (1938) 1
Cal. 692, 17 Pat. 223
7 C.L.R. 675 Disc. 19 P.L.T. 461

1 L.R. LAHORE SERIES

1 Lab. 117 (P.C.) Dist. 40 P.L.R.
477
— 162 Dist. I.L.R. 1938 All.
528-1938 A.L.J. 444
— 234 Meetswani (1938) 1 M.
L.J. 514
— 244 Ref. 40 P.L.R. 29
— 223 Ref. 19 P.L.T. 216.
— 263 Ref. I.L.R. 1938 Lab.
454, 13 Lark. 425
— 493 Ref. 13 Lark. 20
— 540 Ref. 49 B.L.R. 1941
2 Lab. 13 Ref. 13 Lark. 334.
— 40 (P.C.) Fed. I.L.R. 1938
Nag. 231
— 63 Ref. I.L.R. 1938 Lab.
173
— 195 Fed. 11 P. 1938 Lab.
271-40 P.L.R. 153
— 313 Fed. 11 M. 1938 Lab.
447 Ref. 40 P.L.R. 110
3 Lab. 7 Ref. 40 P.L.R. 473.
— 46-1 P.L.R. 1922 (P.C.)
Ref. 40 P.L.R. 508.
— 84 Dist. 40 P.L.R. 111.
— 127 (P.C.) Ref. I.L.R.
1938 Nag. 151.
— 362-A.I.B. 1922 Lab.
433 Ref. 40 P.L.R. 672
4 Lab. 61-A.I.B. 1921 Lab. 81
Ref. 40 P.L.R. 850, Ref.
I.L.R. 1938 Lab. 403
— 350 Cons. I.L.R. (1938) 1
Cal. 369
— 390 Ref. 11 Lark. (1938) 1
Cal. 531-42 C.W.N. 422
5 Lab. 34 Ref. I.L.R. 1938 Lab.
485-40 P.L.R. 267.
— 38 Ref. 40 P.L.R. 403.
— 51-A.I.B. 1924 Lab. 448
Dist. 40 P.L.R. 857.
— 114 Ref. 40 P.L.R. 33
— 192-A.I.R. 1924 P.O. 121
Ref. 40 P.L.R. 616
— 212 Foll. 40 P.L.R. 676
— 288 (F.B.) Ref. 40 P.L.R.
69, Ref. I.L.R. 1938 Lab.
289
— 406 Ref. 40 P.L.R. 193
— 429 Ref. 1938 O.W.N. 40
6 Lab. 1 (P.C.) Dist. I.L.R. 1938
Lab. 246, Ref. 40 P.L.R. 10
— 56 Foll. 17 Pat. 9.
— 131 Ref. I.L.R. 1938 Lab.
271-40 P.L.R. 153
— 208 Dist. 40 P.L.R. 245,
Ref. 40 P.L.R. 126, Ref.
I.L.R. 1938 Lab. 332
— 380 Ref. 40 P.L.R. 518
— 405-26 P.L.R. 695 Ref.
40 P.L.R. 188
— 415 Ref. 19 P.L.T. 104
— 502-A.I.R. 1925 P.O. 267
(P.C.) Ref. 40 P.L.R. 447
— 541 Ref. 40 P.L.R. 468
— 544 Ref. 40 P.L.R. 280

7 Lab. 40-27 P.L.R. 209 Dist.
40 P.L.R. 791
— 50 Fed. I.L.R. 1938 Nag.
305.
— 84 Fed. 17 Pat. 15-19
P.L.T. 432
— 91 Ref. 19 P.L.T. 46
— 173 Over. (1938) 2 M.L.J.
323, 1938 O.W.N. 715.
— 201 Ref. I.L.R. 1938 Lab.
10.
— 373 Dist. I.L.R. 1938 Bom.
64
— 442 Fed. I.L.R. 1938 Nag.
308
— 664 Ref. I.L.R. 1938 Lab.
603-40 P.L.R. 850.
8 Lab. 354 Ref. I.L.R. 1938 Lab.
359.
— 384 (F.B.) Appl. 40 P.L.R.
198 Ref. 40 P.L.R. 128
— 631 Dist. I.L.R. 1938 Nag.
402, Ref. 40 P.L.R. 204
9 Lab. 120-29 P.L.R. 151 Ref.
40 P.L.R. 781.
— 149 Ref. I.L.R. 1938 Nag.
308
— 308 Ref. I.L.R. 1938 Lab.
125-40 P.L.R. 461.
— 501 (F.B.) Foll. I.L.R.
1938 Nag. 268.
10 Lab. 7 Foll. I.L.R. 1938 Nag.
370 Ref. 40 P.L.R. 273
— 85-29 P.L.R. 654 Ref. 40
P.L.R. 781
— 161 Ref. 32 S.L.R. 106
— 263 Ref. 40 Bom. L.R. 422.
— 531 Dist. I.L.R. 1938 Bom.
64
— 681 Ref. I.L.R. 1938 Lab.
485; 40 P.L.R. 267
— 508 (F.B.) Appr. 42
C.W.N. 873, (1938) 2
M.L.J. 115, Ref. 1938
A.L.J. 754, I.L.R. 1938
Bom. 487, 40 Bom. L.R. 844.
— 623 Ref. 40 P.L.R. 591
— 657 Expl. & Dist. I.L.R.
1938 M. 25, Ref. I.L.R.
1938 Bom. 752, 42 C.W.N.
1070
— 709-30 P.L.R. 717 Ref. 40
P.L.R. 777.
— 737 Expl. & Dist. I.L.R.
1938 Mad. 1031.
— 745-30 P.L.R. 239 Ref.
40 P.L.R. 193
— 748-30 P.L.R. 226 Ref.
40 P.L.R. 193
— 750 Dist. I.L.R. (1938) 2
Cal. 320.
— 852 Dist. I.L.R. 1938 Lab.
253-40 P.L.R. 148
11 Lab. 111 Ref. 40 P.L.R. 74
— 172 Foll. 40 P.L.R. 305.
— 199-31 P.L.R. 145 Ref.
40 P.L.R. 655.
— 251 Ref. I.L.R. 1938 Nag.
54
— 258 Ref. 40 P.L.R. 97.

- 16 **CLJ** 217 Ref. I.L.R. (1938) 1 Cal. 607.
 — 385 Dist. 17 Pat. 150
 17 **CLJ** 68 Dist. I.L.R. (1938) 1 Cal. 75
 — 76 Foll. I.L.R. 1938 All 252
 — 372 Dist. 42 C.W.N. 378.
 — 399 Foll. 17 Pat. 263, Ref. I.L.R. 1938 Mad 933.
 18 **CLJ** 29 Ref. 42 C.W.N. 967.
 — 53 Ref. 42 C.W.N. 979.
 — 541 Foll. 42 C.W.N. 405
 19 **CLJ** 251 Foll. I.L.R. (1938) 1 Cal. 413
 — 614 Cons. I.L.R. (1938) 2 Cal. 41
 20 **CLJ** 107 Ref. 42 C.W.N. 637
 — 210 Ref. 42 C.W.N. 913.
 21 **CLJ** 404 Ref. (1938) 2 M.L.J. 623
 — 419 Dist. 17 Pat. 398.
 24 **CLJ** 60 Ref. 42 C.W.N. 913.
 — 88 Ref. (1938) 1 M.L.J. 610
 27 **CLJ** 96 Ref. (1938) 2 M.L.J. 76
 — 110 Ref. 42 C.W.N. 502
 — 605 Dist. I.L.R. (1938) 1 Cal. 206
 28 **CLJ** 4 Ref. 42 C.W.N. 345.
 — 197 Foll. (1938) 1 M.L.J. 806.
 — 271 Ref. I.L.R. (1938) 1 Cal. 75
 29 **CLJ** 44 Ref. 19 P.L.T. 485
 30 **CLJ** 58 Ref. (1938) 1 M.L.J. 298
 — 118 Expl. 17 Pat. 128; Ref. 19 Pat. L.T. 428.
 — 522 Foll. I.L.R. 1938 All. 192
 31 **CLJ** 495 Ref. 32 M.L.R. 106.
 32 **CLJ** 77 Ref. 42 C.W.N. 334.
 — 137 Ref. 42 C.W.N. 1191.
 — 238 Ref. 32 S.L.R. 106
 33 **CLJ** 382 Ref. I.L.R. (1938) 1 Cal. 75.
 34 **CLJ** 319 Ref. 42 C.W.N. 1102
 35 **CLJ** 14 Dist. 42 C.W.N. 866; Ref. I.L.R. (1938) 2 Cal. 41
 — 78 Ref. (1938) 1 M.L.J. 769.
 — 146 Diss. I.L.R. (1938) 2 Cal. 559
 — 161 Mentioned 42 C.W.N. 276.
 — 210 Ref. 42 C.W.N. 913.
 — 503 Ref. 42 C.W.N. 637
 36 **CLJ** 124 Dist. 42 C.W.N. 403
 — 140 Ref. & Dist. 40 Bom. L. H. 166.

- 36 **CLJ** 205 Disappr. I.L.R. 1938 All. 922; Ref. I.L.R. (1938) 1 Cal. 512
 — 228 Ref. I.L.R. (1938) 1 Cal. 320
 — 373 Foll. I.L.R. 1938 Mad 523
 — 481 Ref. (1938) 1 M.L.J. 796.
 — 491 Ref. 42 C.W.N. 1059.
 37 **CLJ** 538 Expl. 42 C.W.N. 832.
 38 **CLJ** 114 Foll. I.L.R. 1938 Mad 523
 39 **CLJ** 40 Ref. I.L.R. (1938) 2 Cal. 411=42 C.W.N. 667.
 — 151 Ref. I.L.R. (1938) 1 Cal. 290=42 C.W.N. 129.
 — 522 Diss. I.L.R. (1938) 2 Cal. 345, Ref. 42 C.W.N. 612.
 — 585 Reviewed 17 Pat. 358.
 40 **CLJ** 150 Ref. I.L.R. (1938) 2 Cal. 411=42 C.W.N. 667
 41 **CLJ** 142 Ref. I.L.R. (1938) 2 Cal. 221.
 — 607 Dist. 42 C.W.N. 1170.
 — Foll. 42 C.W.N. 888
 43 **CLJ** 83 Ref. 19 P.L.T. 594
 44 **CLJ** 475 Ref. 42 C.W.N. 18.
 48 **CLJ** 577 Disc. 19 P.L.T. 456
 49 **CLJ** 12 Ref. I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
 — 89 Ref. 42 C.W.N. 832.
 — 538 Diss. 17 Pat. 84.
 50 **CLJ** 181 Dist. I.L.R. (1938) 2 Cal. 221=42 C.W.N. 538.
 — 397 Ref. I.L.R. (1938) 2 Cal. 14, 42 C.W.N. 457
 51 **CLJ** 25 Ref. 19 P.L.T. 570
 52 **CLJ** 385 Ref. 42 C.W.N. 677, (1938) 1 M.L.J. 834.
 53 **CLJ** 526 Dist. 42 C.W.N. 994.
 54 **CLJ** 220 Ref. 42 C.W.N. 107.
 — 353 Ref. 42 C.W.N. 304
 — 596 Ref. 17 Pat. 189
 55 **CLJ** 82 Ref. 17 Pat. 223.
 — 107 Foll. 1938 Rang. L.R. 102
 56 **CLJ** 185 Ref. 42 C.W.N. 422
 58 **CLJ** 38 Ref. I.L.R. (1938) 1 Cal. 231.
 59 **CLJ** 44 Ref. 19 P.L.T. 119
 61 **CLJ** 548 Ref. I.L.R. (1938) 1 Cal. 164=42 C.W.N. 755.
 63 **CLJ** 117 Ref. 42 C.W.N. 975.
 — 152 Diss. I.L.R. (1938) 2 Cal. 418, Ref. 42 C.W.N. 793.
 64 **CLJ** 558 Foll. I.L.R. (1938) 1 Cal. 607.
 — 768 Ref. 42 C.W.N. 38
 65 **CLJ** 583 Dist. 42 C.W.N. 866
 67 **CLJ** 82 Ref. 42 C.W.N. 1232

BENGAL LAW REPORTS

- (1863) Beng. L.R. (Supp. Vol) 35 Ref. 42 C.W.N. 300
 — 459 Ref. I.L.R. (1938) 1 Cal. 290
 1 Beng. L.R. (O.S.) Criminal 15 Ref. 32 S.L.R. 185.
 — 91 (F.B.) Ref. 1938 A.L.J. 553.
 3 Beng. L.R. 31 (F.B.) Ref. (1938) 1 M.L.J. 710
 — 57 (P.C.)=13 M.I.A. 209
 — Rel. I.L.R. (1938) 2 Cal. 492
 4 Beng. L.R. 11 Foll. 1938 A.L.J. 955, Ref. I.L.R. 1938 All. 922
 — 134 Ref. 40 P.L.R. 319.
 5 Beng. L.R. 345=18 W.R. 75
 — Ref. 42 C.W.N. 77.
 — 619 Dist. 1938 Rang. L.R. 594
 7 Beng. L.R. 213 Disc. I.L.R. 1938 Nag. 182.
 8 Beng. L.R. 433 Appl. 40 Bom. L.R. 658.
 11 Beng. L.R. 321 (P.C.) Ref. (1938) 2 M.L.J. 340
 — 405 Ref. I.L.R. (1938) 1 Cal. 187, I.L.R. 1938 Mad 933
 12 Beng. L.R. 90 Foll. I.L.R. 1938 Nag. 1.
 13 Beng. L.R. 383 Ref. I.L.R. (1938) 2 Cal. 233, 42 C.W.N. 577.
 15 Beng. L.R. 142 Disc. I.L.R. 1938 Nag. 332.
 — 167 Foll. I.L.R. 1938 Bom. 184
 21 Beng. L.R. 558 Foll. 13 Luck. 1.

SUTHERLAND WEEKLY REPORTER.

- (1864) W.R. 185 Ref. 65 I.A. 119; (1938) 1 M.L.J. 458=I.L.R. 1938 All. 314, Ref. 40 Bom. L.R. 735.
 1 W.R. 321 Dist. 17 Pat. 398; Ref. 19 P.L.T. 519
 — 351 (F.B.) Ref. 42 C.W.N. 300
 2 W.R. (Gr.) 80 Ref. 42 C.W.N. 129
 — (P.C.) 98 Ref. 13 Luck. 65.
 6 W.R. 189 Ref. 19 P.L.T. 519.
 — 303 Disc. I.L.R. 1938 Nag. 182.
 7 W.R. (F.B.) 377 Ref. 65 I.A. 219, 13 Luck. 494
 8 W.R. 111 Ref. 42 C.W.N. 913.
 — 171 Expl. 42 C.W.N. 391;
 — Foll. I.L.R. (1938) 2 Cal. 103
 9 W.R. 152 Foll. (1938) 2 M.L.J. 322.

9 W.R. 230 Foll. I.L.R. 1938 Nag.

54
— 505 Foll. 42 C.W.N. 1237
— 520 Foll. 37 S.L.R. 172

10 W.R. 15 Foll. 42 C.W.N. 913
— 229 Foll. I.L.R. 1938 Nag.
154

— 101 Foll. 17 Pat. 398, Ref.
19 P.L.T. 519

12 W.R. (O.J.) 25-4 B.L.R. 72
(O.J.) Foll. (1938) 2 M.L.J.
1511

— 229 Foll. (1938) 1 M.L.J. 73

— 485 Foll. 17 Pat. 358

— 518 Dist. (1938) 2 M.L.J.
1072

14 W.R. (Cr.) 173 Foll. I.L.R.

(1938) 1 Cal. 531

— 174 Ref. 42 C.W.N. 97

15 W.R. 274 Reviewed 17 Pat.

356

— 285 Ref. 13 Lach. 129

— 531 Dist. 42 C.W.N. 1038

16 W.R. P.C. 5 Foll. 111

111 Foll. 111

— 37 Foll. 42 C.W.N. 31

17 W.R. 275 Ref. 40 P.L.R. 64

— 509 Ref. 42 C.W.N. 97

18 W.R. 69 (Cr.) Ref. I.L.R.

(1938) 1 Cal. 270, 42 C.W.N.

127

— 91 Foll. 42 C.W.N. 1191

— 163 Ref. 40 P.L.R. 556

— (P.C.) 166 Ref. 42 C.W.N.

1059

— (P.C.) 185 Ref. 40 P.L.R.

243

19 W.R. 69 Ref. 42 C.W.N. 31

— (P.C.) 315 Dist. I.L.R.

1938 Mad. 607

21 W.R. 1 Ref. I.L.R. 1938 Mad.

933

22 W.R. 29 Ref. 42 C.W.N. 913

— 231 Ref. 42 C.W.N. 359

23 W.R. 52 Foll. I.L.R. 1938 Nag.

21 Ref. 19 P.L.T. 511

24 W.R. (Cr.) 30 Ref. I.L.R.

(1938) 1 Cal. 290

• 24 W.R. (Cr.) 41 Ref. 1938

Rang. L.R. 121

CALCUTTA LAW REPORTS.

1 C.L.R. 81 Ref. 32 M.L.R. 185.

2 C.L.R. 323 Ref. I.L.R. (1938) 1

Cal. 21.

[1878] 3 C.L.R. 285 Ref. I.L.R.

(1938) 1 Cal. 21.

4 C.L.R. 92 Ref. & Ref. I.L.R.

1938 Ah. 236, 1938 A.L.J.

113.

— 105 Dist. I.L.R. (1938) 1

Cal. 290, Ref. 42 C.W.N.

129

5 C.L.R. 253 Ref. I.L.R. (1938) 1

Cal. 692, 17 Pat. 223

7 C.L.R. 675 Dist. 19 P.L.T. 461

I.L.R. LAHORE SERIES

1 Lah. 117 (P.C.) Dist. 40 P.L.R.

477.

— 192 Dist. I.L.R. 1938 Ah.

528-1938 A.L.J. 444

— 234 Dist. 1938 (1938) 1 M.

1-1 J. 514

— 284 Ref. 40 P.L.R. 29.

— 323 Ref. 13 Lach. 246

— 363 Ref. I.L.R. 1938 Lah.

458, 13 Lach. 425

— 433 Ref. 13 Lach. 20

— 540 Ref. 40 P.L.R. 1041.

5 Lah. 13 Ref. 13 Lach. 334.

— 40 (P.C.) Foll. I.L.R. 1938

Nag. 233

— 73 Ref. I.L.R. 1938 Lah.

173

— 195 Ref. I.L.R. 1938 Lah.

271-40 P.L.R. 154

— 313 Foll. I.L.R. 1938 Lah.

447 Ref. 40 P.L.R. 110.

3 Lah. 7 Ref. 40 P.L.R. 473.

— 18-1 P.L.R. 1922 (P.C.)

Ref. 40 P.L.R. 508.

— 84 Dist. 40 P.L.R. 111.

— 127 (P.C.) Ref. I.L.R.

1938 Nag. 151.

— 362-A I.R. 1922 Lah.

433 Ref. 40 P.L.R. 672

4 Lah. 61-A I.R. 1921 Lah. 81

Ref. 40 P.L.R. 859, Ref.

I.L.R. 1938 Lah. 603

— 350 Cons. I.L.R. (1936) 1

Cal. 369

— 390 Ref. I.L.R. (1938) 1

Cal. 531-42 C.W.N. 422

5 Lah. 34 Ref. I.L.R. 1938 Lah.

485-40 P.L.R. 267.

— 38 Ref. 40 P.L.R. 403.

— 64-A I.R. 1921 Lah. 448

Dist. 40 P.L.R. 857.

— 114 Ref. 40 P.L.R. 33

— 192-A I.R. 1921 P.H. 121

Ref. 40 P.L.R. 616

— 212 Foll. 40 P.L.R. 676

— 288 (F.B.) Ref. 40 P.L.R.

69, Ref. I.L.R. 1938 Lah.

289

— 406 Ref. 40 P.L.R. 193

— 429 Ref. 1938 O.W.N. 40.

6 Lah. 1 (P.C.) Dist. I.L.R. 1938

Lah. 246, Ref. 40 P.L.R. 10

— 56 Foll. 17 Pat. 9.

— 131 Ref. I.L.R. 1938 Lah.

271-40 P.L.R. 153

— 206 Dist. 40 P.L.R. 245.

Ref. 40 P.L.R. 126, Ref.

I.L.R. 1938 Lah. 332

— 380 Ref. 40 P.L.R. 518.

— 405-26 P.L.R. 695 Ref

40 P.L.R. 188

— 415 Ref. 19 P.L.T. 104

— 502-A I.R. 1925 P.O. 267

(P.C.) Ref. 40 P.L.R. 447

— 541 Ref. 40 P.L.R. 468

— 544 Ref. 40 P.L.R. 280.

7 Lah. 40-27 P.L.R. 209 Dist.

40 P.L.R. 794

— 80 Foll. I.L.R. 1938 Nag.

305.

— 81 Foll. 17 Pat. 15-19

P.L.T. 432

— 91 Ref. 19 P.L.T. 86

— 173 Overr. (1938) 2 M.L.J.

323; 1938 O.W.N. 715.

— 201 Ref. I.L.R. 1938 Lah.

10

— 399 Dist. I.L.R. 1938 Bom.

61.

— 412 Ref. I.L.R. 1938 Nag.

309.

— 664 Ref. I.L.R. 1938 Lah.

601-40 P.L.R. 850

8 Lah. 354 Ref. I.L.R. 1938 Lah.

359

— 384 (F.B.) Appl. 40 P.L.R.

128, Ref. 40 P.L.R. 128

— 631 Dist. I.L.R. 1938 Nag.

302, Ref. 40 P.L.R. 204

9 Lah. 120-29 P.L.R. 151 Ref.

40 P.L.R. 781.

— 149 Ref. I.L.R. 1938 Nag.

308.

— 308 Ref. I.L.R. 1938 Lah.

125-40 P.L.R. 461

— 601 (F.B.) Foll. I.L.R.

1938 Nag. 268.

10 Lah. 7 Foll. I.L.R. 1938 Nag.

370 Ref. 40 P.L.R. 273

— 85-29 P.L.R. 654 Ref. 40

P.L.R. 781

— 101 Ref. 32 S.L.R. 106

— 203 Ref. 40 Bom. L.M. 422.

— 631 Dist. I.L.R. 1938 Bom.

64

— 681 Ref. I.L.R. 1938 Lah.

485, 40 P.L.R. 267.

— 698 (F.B.) Appr. 42

C.W.N. 873, (1938) 2

M.L.J. 115, Ref. 1938

A.L.J. 754, I.L.R. 1938

Bom. 487, 40 Bom. I.L.R. 854

— 623 Ref. 40 P.L.R. 591.

— 657 Expl. & Dist. I.L.R.

1938 M. 25, Ref. I.L.R.

1938 Bom. 752, 42 C.W.N.

1070

— 709-30 P.L.R. 717 Ref. 40

P.L.R. 777.

— 737 Expl. & Dist. I.L.R.

1938 Mad. 1031.

— 745-30 P.L.R. 239 Ref.

40 P.L.R. 193.

— 718-30 P.L.R. 226 Ref.

40 P.L.R. 193

— 750 Dist. I.L.R. (1938) 2

Cal. 320.

— 852 Dist. I.L.R. 1938 Lah

258-40 P.L.R. 148

11 Lah. 111 Ref. 40 P.L.R. 74

— 272 Foll. 40 P.L.R. 305

— 199-31 P.L.R. 145 Ref

40 P.L.R. 655

— 251 Ref. I.L.R. 1938 Nag.

54

— 258 Ref. 40 P.L.R. 97.

- 11 Lah 315=A I.R. 1930 Lah.
700=31 P.L.R. 533 Ref. 40
P.L.R. 672.
402 Diss 1933 Rang L.R.
580
424=31 P.L.R. 233 Ref
40 P.L.R. 616
427=31 P.L.R. 644 Rel
40 P.L.R. 292.
657 (P.C.) Foll. I.L.R.
1938 Mad 586
716=8 P.R. 1905 (Rev.)
Dist. 40 P.L.R. 240.
- 12 Lah 111 Foll. 40 P.L.R. 111
129 (F.B.) Ref. I.L.R. 1933
Lah. 477=43 P.L.R. 308
184 Rel I.L.R. 1938 Lah.
502
359=32 P.L.R. 504 (F.B.)
Ref 40 P.L.R. 164
385 Ref. I.L.R. 1938 Mad.
983.
495 Foll I.L.R. 1938 Nag
136.
671 Ref. I.L.R. 1938 Lah.
103
741 Ref 19 P.L.T. 511.
787 Foll I.L.R. 1938 Mad.
270=(1938) 1 M.L.J. 11
(F.B.)
768=32 P.L.R. 350 Ref.
40 P.L.R. 613
- 13 Lah 70 Ref 40 P.L.R. 273.
126 Rel I.L.R. 1938 Lah.
173.
180=32 P.L.R. 446 Foll.
40 P.L.R. 676.
259 Dist. 40 P.L.R. 833.
276 Ref. 40 P.L.R. 29.
342 (F.B.) Foll. I.L.R.
1938 Bom 331=40 Bom L.
R. 297 (F.B.), Ref. I.L.R.
1938 Nag. 298, 19 P.L.T.
21.
520=33 P.L.R. 808 Foll.
40 P.L.R. 188.
618 Not Foll. I.L.R. 1938
Mad. 922, 1938 A.L.J. 955;
19 P.L.T. 80; Ref. (1938)
1 M.L.J. 316.
660 Foll. 13 Luck. 35.
766 Foll I.L.R. 1938 Nag.
308.
775 Rel. I.L.R. 1938 Lah.
417.
- 14 Lah. ■ Ref. 42 C.W.N. 523
106 Ref. 1938 O.W.N. 257.
206 Dist. I.L.R. 1938 Lah
379.
231=33 P.L.R. 919 Ref.
40 P.L.R. 273
255 Ref. I.L.R. 1938 Lah.
47.
345 Reversed. I.L.R. 1938
Lah 1 (P.C.).
409=34 P.L.R. 528 Ref.
40 P.L.R. 38
421=34 P.L.R. 101 Ref.
40 P.L.R. 97.
- 14 Lah 580 Ref. 40 P.L.R. 124.
Rel. I.L.R. (1938) 2 Cal.
320
646 Rel. I.L.R. 1938 Nag
45.
656 Foll I.L.R. 1938 Nag.
409
696 Foll 40 P.L.R. 25
703=34 P.L.R. 717 Ref.
40 P.L.R. 422.
715 Ref I.L.R. 1938 All.
865=1938 A.L.J. 813
744 Ref 40 Bom L.R. 411.
- 15 Lah. 9 Foll. I.L.R. 1938 Nag.
289.
78 Not Foll I.L.R. 1938
Mad. 460=(1938) 1 M.L.J.
159.
125 Ref. 40 P.L.R. 588
132 Foll. 1938 Rang L.R.
651.
242 Ref. 1938 Rang L.R.
468
294 Rel. I.L.R. 1938 Lah.
439.
389=36 P.L.R. 337 (F.B.)
Dist. 40 P.L.R. 245.
531 (F.B.) Dist. I.L.R.
1938 Lah 240; Foll 40 P.
L.R. 2, Ref. 40 P.L.R. 27;
Rel. I.L.R. 1938 Lah. 450
591 Ref. I.L.R. 1938 Bom.
1.
667 Ref 40 P.L.R. 6
698 Foll (1938) 1 M.L.J.
824
746 Rel upon. I.L.R. 1938
Lah. 103=40 P.L.R. 546
869 Ref. 40 P.L.R. 38; 40
P.L.R. 289.
907 Dist. I.L.R. 1938 Lah
367, Ref. 40 P.L.R. 427
- 16 Lah 173 Ref. 40 P.L.R. 206.
204 Reversed 1938 O.W.N.
715.
237 Ref. 40 P.L.R. 126;
Rel. I.L.R. 1938 Lah. 332.
313 Ref. 40 P.L.R. 298.
442 (F.B.) Expl (1938) 1
M.L.J. 113.
485 Ref. 40 P.L.R. 833.
517 Disc 19 P.L.T. 511.
594 Diss 40 P.L.R. 758 (2)
680 Ref. 40 P.L.R. 613.
747=37 P.L.R. 850 Ref.
40 P.L.R. 350
782 Affirm. I.L.R. 1938
Lah. 383.
921 Foll I.L.R. 1938 Lah.
93; Ref 40 P.L.R. 97.
1086 Rel. I.L.R. 1938 Lah.
509
1090 Foll 40 P.L.R. 461.
- 17 Lah 53 Ref 40 P.L.R. 123.
74 (F.B.) Not Foll. I.L.R.
1938 Mad. 460=(1938) 1
M.L.J. 159.
275 Dist. 1938 Rang L.R.
371; Ref. (1938) 2 M.L.J.
44.
- 17 Lah 356 Ref. I.L.R. 1938 All.
563.
491 Ref. 1938 Rang L.R.
463.
520 Foll. I.L.R. 1938 Lah.
148.
610 Rel. I.L.R. 1938 Lah.
417=40 P.L.R. 235;
629 Dist. I.L.R. 1938 All
875, 40 P.L.R. 401.
737 Rel. I.L.R. (1938) 2
Cal 320.
- 18 Lah. 234 Foll 40 Bom L.R.
1010.
268 Ref. (1938) 1 M.L.J.
487.
484=39 P.L.R. 839 Ref.
40 P.L.R. 303.
594 Ref. 40 P.L.R. 588.
I.L.R. 1937 Lah. 525 Foll. I.L.R.
1938 Nag. 115
I.L.R. 1938 Lah. 183 Appr. I.L.R.
1938 All 861.

PUNJAB RECORD (CIVIL AND CRIMINAL)

- 46 P.R. 1868 Foll 40 P.L.R. 746.
20 P.R. 1871 Dist. I.L.R. 1938
Lah 411; Ref. 40 P.L.R.
269
46 P.R. 1875 Rel. I.L.R. 1938
Lah 367.
20 P.R. 1876 Dist I.L.R. 1938
Lah. 411.
22 P.R. 1876 Ref. 40 P.L.R. 269.
124 P.R. 1876 Ref I.L.R. 1938
Lah. 277.
1 P.R. 1877 Ref. 40 P.L.R. 833.
72 P.R. 1879 Ref. I.L.R. 1938
Lah. 193=40 P.L.R. 193
(F.B.), 40 P.L.R. 533
114 P.R. 1880 Disappr 40 P.L.R.
427.
4 P.R. 1881 (Rev.) Dist I.L.R.
1938 Lah. 411=40 P.L.R.
269.
107 P.R. 1881 Ref. I.L.R. 1938
Lah. 586=40 P.L.R. 494.
37 P.R. 1883 Ref. 40 P.L.R. 240.
64 P.R. 1883 Rel. I.L.R. 1938
Lah 173
88 P.R. 1884 Ref. I.L.R. 1938
Lah. 586=40 P.L.R. 494
122 P.R. 1884 Ref. I.L.R. 1938
Lah. 485=40 P.L.R. 267
132 P.R. 1884 Ref. 40 P.L.R.
722; I.L.R. 1938 Lah. 277.
138 P.R. 1884 Ref 40 P.L.R. 97.
153 P.R. 1884 Ref. 40 P.L.R. 193.
11 P.R. 1885 (Rev.) Doubt. I.L.R.
1938 Lah. 589
93 P.R. 1885 Ref. I.L.R. 1938
Lah. 485=40 P.L.R. 267.
27 P.R. 1888 Ref. I.L.R. 1938
Lah. 586.

103 P.R. 1882 Ref. 40 P.L.R. 653.
163 P.R. 1890 Ref. 40 P.L.R. 111.
1 P.R. 1921 (Cr.) Ref. I.L.R.
1935 Lab. 251.
4 P.R. 1921 Ref. 40 P.L.R. 672.
44 P.R. 1921 (F.B.) Foll. 40
P.L.R. 111.
106 P.R. 1921 Ref. I.L.R. 1935
Lab. 277-40 P.L.R. 722.
3 P.R. 1922 Ref. 40 P.L.R. 548.
63 P.R. 1922 Ref. 40 P.L.R. 544.
9 P.R. 1925 (Rev.) Ref. I.L.R.
1935 Lab. 547.
25 P.R. 1925 Dist. I.L.R. 1935
Lab. 111 Ref. 40 P.L.R.
279.
96 P.R. 1925 Dist. 40 P.L.R. 33.
4 P.R. 1927 Ref. 40 P.L.R. 492.
13 P.R. 1927 Ref. 40 P.L.R. 64.
Ref. I.L.R. 1935 Lab. 318.
47 P.R. 1927 Ref. I.L.R. 1935
Lab. 374.
62 P.R. 1928 Ref. 40 P.L.R. 477.
69 P.R. 1928 Ref. 40 P.L.R. 47.
70 P.R. 1928 Dist. 40 P.L.R. 240.
82 P.R. 1928 F.B. Ref. I.L.R.
1935 Lab. 589.
61 P.R. 1929 Ref. I.L.R. 1935
Lab. 277-40 P.L.R. 722.
111 P.R. 1900 Dist. I.L.R. 1935
Lab. 341-40 P.L.R. 196.
150 P.R. 1900 Ref. 40 P.L.R. 524.
6 P.R. 1901 Dist. 40 P.L.R. 240.
84 P.R. 1901-112 P.L.R. 1901
(F.B.) Ref. 40 P.L.R. 651.
25 P.R. 1902 Ref. 40 P.L.R. 6.
35 P.R. 1902 Dist. I.L.R. 1935
Lab. 341-40 P.L.R. 196.
50 P.R. 1902 Ref. I.L.R. 1935
Lab. 485-40 P.L.R. 261.
100 P.R. 1902 Ref. 40 P.L.R. 527.
4 P.R. 1903 (Rev.) Doubt. I.L.R.
1935 Lab. 589.
35 P.R. 1903 (F.B.) Dist. 40
P.L.R. 193.
1935 Lab. 193-47 P.L.R.
533 (F.B.)
58 P.R. 1903 Ref. 40 P.L.R. 728.
22 P.R. 1904 Ref. I.L.R. 1935
Lab. 485-40 P.L.R. 267.
31 P.R. 1904 Ref. 40 P.L.R. 300.
71 P.R. 1904 Ref. I.L.R. 1935
Lab. 485-40 P.L.R. 267.
24 P.R. 1905 Ref. 40 P.L.R. 512.
Dist. I.L.R. 1935 Lab. 490.
44 P.R. 1905 (Cr.) Ref. I.L.R.
1935 Lab. 229.
67 P.R. 1905 Overr. (1938) 2
M.L.J. 323; 1938 O.W.N.
715.
12 P.R. 1906 (Cr.) Ref. 40 P.L.R.
806.
85 P.R. 1906 Ref. I.L.R. 1935
Lab. 277-40 P.L.R. 722.
110 P.R. 1906 Ref. 40 P.L.R. 565.
137 P.R. 1906 Dist. 40 P.L.R. 750.
46 P.R. 1907-192 P.L.R. 1908
Foll. 40 P.L.R. 798.

96 P.R. 1907 Ref. I.L.R. 1935
Lab. 485-40 P.L.R. 267.
115 P.R. 1907 Ref. 40 P.L.R. 781.
127 P.R. 1907 Ref. 40 P.L.R. 512.
Ref. I.L.R. 1935 Lab. 490.
17 P.R. 1908 (Cr.)-54 P.L.R.
1908 (Supp.) Ref. 40 P.L.R.
N. 406.
33 P.R. 1908 (F.B.) Appr. (1938)
2 M.L.J. 323; 1938 O.W.
N. 715.
35 P.R. 1908 Dist. I.L.R. 1935
Lab. 46; Ref. 40 P.L.R.
10.
100 P.R. 1908 Ref. I.L.R. 1935
Lab. 411-40 P.L.R. 267.
103 P.R. 1908 (F.B.) I.L.R. 1935
Lab. 54-40 P.L.R. 494.
108 P.R. 1908 Foll. 40 P.L.R. 501.
118 P.R. 1908 Ref. I.L.R. 1935
Lab. 379.
121 P.R. 1908-3 P.L.R. 190
Ref. 40 P.L.R. 781.
65 P.R. 1909 Ref. I.L.R. 1935
Lab. 411-40 P.L.R. 267.
78 P.R. 1909 Dist. I.L.R. 1935
Lab. 508.
93 P.R. 1909 (P.C.) 467 Ref.
I.L.R. 1935 Lab. 173.
13 P.R. 1910-60 P.L.R. 1910
Ref. 40 P.L.R. 653.
20 P.R. 1910 (Cr.)-140 P.L.R.
1910 Ref. 40 P.L.R. 501.
29 P.R. 1910 Ref. I.L.R. 1935
Lab. 367.
37 P.R. 1910-50 P.L.R. 1910
Ref. 40 P.L.R. 672.
42 P.R. 1910 (P.C.) Foll. 40 P.L.R.
R. 505.
28 P.R. 1911 Ref. 40 P.L.R. 185.
45 P.R. 1912-71 P.L.R. 1912
Ref. 40 P.L.R. 672.
94 P.R. 1912 Dist. 40 P.L.R. 798.
95 P.R. 1912 Ref. 40 P.L.R. 498.
27 P.R. 1913 Ref. 40 P.L.R. 319.
75 P.R. 1913 Dist. I.L.R. 1935
Lab. 598.
99 P.R. 1914 Ref. 40 P.L.R. 672.
59 P.R. 1914 Ref. 40 P.L.R. 319.
78 P.R. 1914 Foll. 40 P.L.R. 794.
8 P.R. 1915 Dist. 40 P.L.R. 153.
Foll. I.L.R. 1935 Lab. 271.
111 P.R. 1915 (Cr.) Dist. I.L.R.
1935 Lab. 681.
112 P.R. 1916 Foll. 40 P.L.R. 295.
Ref. 40 P.L.R. 20. 40 P.L.R.
R. 573.
53 P.R. 1916 Dist. 40 P.L.R. 784.
129 P.R. 1916 Foll. I.L.R. 1935
Lab. 271-40 P.L.R. 153.
45 P.R. 1917 Ref. 40 P.L.R. 781.
107 P.R. 1917 Foll. I.L.R. 1935
Lab. 184.
1 P.R. 1918 (Cr.) Ref. I.L.R. 1935
Lab. 603-40 P.L.R. 850.
5 P.R. 1918 Foll. I.L.R. 1935
Lab. 271-40 P.L.R. 153.
64 P.R. 1918 (P.C.) Dist. I.L.R.
1935 Lab. 367.

67 P.R. 1918 Foll. I.L.R. 1935
Lab. 571-40 P.L.R. 692.
87 P.R. 1918 Ref. I.L.R. 1935
Lab. 485-40 P.L.R. 267.
82 P.R. 1918 (P.C.) Ref. 40 P.L.R.
R. 10; Ref. I.L.R. 1935
Lab. 246.
104 P.R. 1918 Ref. 40 P.L.R. 653.
145 P.R. 1918 Ref. 40 P.L.R. 498.
148 P.R. 1918 Dist. 40 P.L.R. 801.

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9 Lab. L.J. 257 Ref. 42 C.W.N.
1153.
10 L.L.J. 382-109 I.O. 272 Ref.
40 P.L.R. 527.

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53 P.L.R. 1902 Ref. I.L.R. 1935
Lab. 318; 40 P.L.R. 64.
29 P.L.R. 1910 (Supp.) Ref. 40
P.L.R. 653.
203 P.L.R. 1913 Foll. 40 P.L.R.
234.
292 P.L.R. 1913 Ref. 40 P.L.R.
97.
169 P.L.R. 1915 (2) Ref. 40 P.L.R.
R. 20.
11 P.L.R. 1917 Ref. 40 P.L.R.
201.
25 P.L.R. 1918 Foll. 40 P.L.R.
798.
27 P.L.R. 18 Ref. 40 P.L.R. 235.
--- 386 Ref. 40 P.L.R. 806.
29 P.L.R. 1910 Supp. Ref. 40 P.L.R.
685.
30 P.L.R. 191 Foll. 40 P.L.R.
530, Ref. 40 P.L.R. 38.
--- 433 Ref. 40 P.L.R. 573.
31 P.L.R. 281 Ref. 40 P.L.R. 573.
--- 316 Dist. I.L.R. 1935 Lab.
240; Ref. 40 P.L.R. 27.
--- 736 Ref. 40 P.L.R. 280.
--- 842 Ref. 40 P.L.R. 243.
--- 893 Ref. 40 P.L.R. 311.
32 P.L.R. 350 Ref. 40 P.L.R. 682.
--- 365 Dist. 40 P.L.R. 264.
--- 413 Ref. 40 P.L.R. 188.
Ref. 40 P.L.R. 409.
--- 729 Ref. 40 P.L.R. 204.
--- 945 Ref. 40 P.L.R. 458.
33 P.L.R. 251 Ref. 40 P.L.R. 311.
--- 416 Dist. 40 P.L.R. 295.
Ref. 40 P.L.R. 573.
--- 478 Dist. 40 P.L.R. 295.
--- 488 Ref. 40 P.L.R. 204.
--- 517 Ref. I.L.R. 1935 Lab.
417, 40 P.L.R. 235.
--- 584 Ref. 40 P.L.R. 573.
--- 667 Ref. 40 P.L.R. 518.
--- 887 Foll. 40 P.L.R. 79.
--- 940 Ref. 40 P.L.R. 193.
--- 1090 Ref. 40 P.L.R. 300.
34 P.L.R. 262 Foll. 40 P.L.R. 196.
--- 417 Ref. 40 P.L.R. 193.
--- 489 40 P.L.R. 38.
--- 853 Ref. 40 P.L.R. 573.
35 P.L.R. 143 Ref. 40 P.L.R. 269.
--- 173 Ref. 40 P.L.R. 850.

35 P.L.R. 675 Reviewed 40 P.L.R. 153.

37 P.L.R. 441 Ref. 40 P.L.R. 672. (1935) 87 P.L.R. 624 (P.C.) Foll. I.L.R. 1938 Lah. 75, Rel. 42 C.W.N. 38.

38 P.L.R. 74 Ref. 40 P.L.R. 640. —182 (P.C.) Ref. 40 P.L.R. 319.

—233 Ref. 40 P.L.R. 8. —269 Disc. 40 P.L.R. 193. —333 Rel. I.L.R. 1938 Lah. 374.

—349 Ref. 40 P.L.R. 204. —390 Ref. 40 P.L.R. 231. —623 Ref. 40 P.L.R. 38. —723 Ref. 40 P.L.R. 38.

—944 = A.I.B. 1937 Lah 16 Foll. 40 P.L.R. 435. —1024 Ref. 40 P.L.R. 640. —1107 Ref. I.L.R. 1938 Lah. 359.

39 P.L.R. 6 Diss. 40 P.L.R. 264. —125 Ref. 40 P.L.R. 403. —338 Rel. I.L.R. 1938 Lah. 336.

—340 (F.B.) Rel. 40 P.L.R. 690. —640 Ref. 40 P.L.R. 64. —849 Ref. 40 P.L.R. 303. —758 Rel. I.L.R. 1938 Lah. 336.

40 P.L.R. 14 Foll. 40 P.L.R. 264. —33 Ref. 40 P.L.R. 528. —138 Foll. 40 P.L.R. 664. —193 Foll. 40 P.L.R. 801.

I.L.R. MADRAS SERIES

1 Mad. 89 Ref. I.L.R. 1938 Mad. 1040.

2 Mad. 58 Foll. I.L.R. 1938 Bom. 362 = 40 Bom. L.R. 365. —140 Ref. (1938) 2 M.L.J. 165, 40 Bom. L.R. 59. —174 Appr. I.L.R. 1938 All. 342.

—175 Ref. (1938) 2 M.L.J. 85. —223 Ref. upon I.L.R. 1938 Lah 103; Ref. 40 P.L.R. 546.

3 Mad. 66 Ref. (1938) 1 M.L.J. 235. —93 Ref. 1938 Rang. L.R. 176. —236 Ref. 40 P.L.R. 767.

4 Mad. 179 Ref. I.L.R. 1938 Nag. 91.

—315 Ref. 40 P.L.R. 319. —317 Ref. 1938 A.L.J. 500. —330 Cons. (1938) 2 M.L.J. 923.

—344 Ref. I.L.R. 1938 All. 114, I.L.R. 1938 Mad 1040. —115.

—108 Dist. (1938) 1 M.L.J. 757.

—173 Expl. 17 Pat. 206

5 Mad. 273 Ref. I.L.R. 1938 All. 114.

—391 Ref. 40 P.L.R. 243. 6 Mad. 27 Dist. (1938) 1 M.L.J. 526.

—344 Ref. I.L.R. 1938 All. 513 = 1938 A.L.J. 313, 1938 O.W.N. 433. 7 Mad. 89 Not Foll. 40 P.L.R. 469.

—112 Ref. I.L.R. 1938 Mad. 933. —255 40 P.L.R. 243. —434 Ref. (1938) 1 M.L.J. 351.

—936 Foll. 1938 O.W.N. 7. 8 Mad. 175 Ref. (1938) 2 M.L.J. 340, Rel. I.L.R. 1938 Nag. 54.

—557 Ref. 40 Bom. L.R. 937. 9 Mad. 256 Dist. (1938) 1 M.L.J. 769.

—271 Diss. I.L.R. (1938) 2 Cal. 320. —463 Rel. 13 Luck. 444. 10 Mad. 9 Ref. I.L.R. 1938 Mad. 897 = (1938) 1 M.L.J. 467.

—94 Ref. I.L.R. 1938 Mad. 933. —160 Ref. 1938 Rang. L.R. 270.

—205 Ref. 40 P.L.R. 824. —232 Ref. I.L.R. 1938 Mad. 381 = (1938) 1 M.L.J. 257. —334 Ref. 40 Bom. L.R. 937.

—375 Ref. (1938) 2 M.L.J. 85. 11 Mad. 204 Ref. I.L.R. 1938 Lah. 75.

—323 Ref. (1938) 1 M.L.J. 817. —330 Dist. (1938) 2 M.L.J. 337.

—345 Ref. 40 P.L.R. 685. —659 Ref. 40 P.L.R. 591. 12 Mad. 9 Ref. I.L.R. 1938 Lah. 494.

—260 (F.B.) Ref. (1938) 2 M.L.J. 511. 13 Mad. 10 Ref. I.L.R. 1938 Nag. 115.

—269 Ref. 19 P.L.T. 309. —445 Ref. 40 P.L.R. 319. 14 Mad. 1 Ref. 42 C.W.N. 345.

—149 Ref. I.L.R. 1938 Nag. 115. —150 Rel. 13 Luck. 101, (1938) 1 M.L.J. 796.

—232 Diss. I.L.R. 1938 All. 714, 1938 O.W.N. 642. —269 Ref. I.L.R. 1938 All. 664; 1938 A.L.J. 561. —408 (F.B.) Mentioned (1938) 1 M.L.J. 715.

15 Mad. 12 Ref. I.L.R. 1938 Lah. 494. —70 Ref. 13 Luck. 405. —94 Foll. I.L.R. 1938 Nag. 308.

—95 Ref. I.L.R. 1938 Mad. 898.

16 Mad. 181 Foll. I.L.R. 1938 Mad. 309 = (1938) 1 M.L.J. 29.

—333 Ref. I.L.R. 1938 Mad. 897 = (1938) 1 M.L.J. 467. —421 Ref. I.L.R. 1938 Nag. 115.

16 Mad. 23 Appl. (1938) 1 M.L.J. 232; Ref. 40 Bom. L.R. 704; 19 P.L.T. 169, I.L.R. 1938 Mad 551; 42 C.W.N. 449.

—144 Dist. (1938) 2 M.L.J. 337. —194 Ref. I.L.R. 1938 Lah. 494.

—220 Dist. (1938) 1 M.L.J. 450. —285 Ref. 17 Pat. 245. —341 Ref. (1938) 2 M.L.J. 362.

—361 Ref. 13 Luck. 138. —452 Foll. I.L.R. 1938 All. 342, Ref. 1938 A.L.J. 117. 17 Mad. 131 Diss. I.L.R. 1938 All. 714, 1938 O.W.N. 642.

—160 Foll. & Disc. 40 Bom. L.R. 937. —165 Appr. I.L.R. 1938 All. 342.

—182 Ref. I.L.R. 1938 Nag. 115. —379 Ref. I.L.R. (1938) 1 Cal. 75.

18 Mad. 158 Ref. (1938) 1 M.L.J. 17. —201 Ref. I.L.R. 1938 Bom. 184.

—255 Ref. (1938) Rang. L.R. 102. —306 (F.B.) Foll. I.L.R. 1938 Nag. 308.

19 Mad. 211 Rel. (1938) 2 M.L.J. 683. —240 Ref. 40 P.L.R. 806.

20 Mad. 3 Rel. I.L.R. 1938 All. 750 = 1938 A.L.J. 565, 1938 O.W.N. 591. —35 Ref. (1938) 1 M.L.J. 171.

—79 Diss. 1938 Rang. L.R. 236. —84 Dist. 1938 Rang. L.R. 19. —299 Ref. I.L.R. 1938 Mad. 888 = (1938) 1 M.L.J. 634.

—393 Appr. (1938) 1 M.L.J. 334 (F.B.). 21 Mad. 8 Ref. 40 P.L.R. 591.

—40 Ref. I.L.R. 1938 Nag. 255. —141 Not Foll. I.L.R. 1938 Nag. 45.

—263 Ref. I.L.R. 1938 Nag. 115. —293 Ref. (1938) 1 M.L.J. 485.

—371 Ref. (1938) 1 M.L.J. 750. —388 Ref. 17 Pat. 223. 22 Mad. 49 (F.B.) Expl. (1938) 1 M.L.J. 373 = I.L.R. 1938 Mad. 568.

—58 Foll. 40 Bom. L.R. 365.

- 22 *Mad.* 132 *Ref.* 1938 A.L.J. 851.
 — 155 *Ref.* 17 *Pat.* 245.
 — 166 *Ref.* (1938) 2 M.L.J.
 — 941 *Ref.* (1938) 2 M.L.J.
 170.
 — 179 *Disc.* 17 *Pat.* 191
 — 209 *Ref.* I.L.R. 1938 Nag.
 370
 — 223 *Ref.* I.L.R. 1938 Bom
 372
 — 234 *Ref.* (1938) 1 M.L.J.
 368.
 — 245 *Ref.* (1938) 1 M.L.J. 44
 — 259 *Ref.* I.L.R. 1938 AH.
 614—1938 A.L.J. 521.
 — 455 *Ref.* (1938) 1 M.L.J.
 455
 — 519 *Ref.* I.L.R. 1938 Nag
 10
 23 *Mad.* 24 *Overr.* I.L.R. 1938
Mad. 675—(1938) 1 M.L.J.
 314. *Ref.* I.L.R. 1938 AH
 89
 — 25 *Ref.* 1938 A.L.J. 680
 — 54 *C.N.* & *Disc.* 1938/2
 M.L.J. 840
 — 121 *Foll.* (1938) 1 M.L.J.
 417
 — 155 *Ref.* I.L.R. 1938 Bom
 114.
 — 271 (P.C.) *Ref.* 40 P.L.R.
 319.
 — 371 (F.B.) *Disc.* & *Appr.*
 I.L.R. 1938 *Mad.* 609
 — 439 *Foll.* (1938) 1 M.L.J.
 113.
 — 490 *Appr.* (1938) 1 M.L.J.
 628 (F.B.)
 — 510 *Ref.* I.L.R. 1938 AH
 767—1938 A.L.J. 617.
 — 597 (F.B.) *Expt.* I.L.R. 1938
Mad. 565—(1938) 1 M.L.J.
 378
 24 *Mad.* 163 *Foll.* I.L.R. 1938
Mad. 466—(1938) 2 M.L.J.
 651.
 — 205 *Expt.* I.L.R. (1938) 1
 Cal 35.
 — 233 *Not Foll.* I.L.R. 1938
 Nag 45
 — 555 *Ref.* I.L.R. 1938 Nag
 10.
 — 654 *Disc.* (1938) 1 M.L.J.
 378.
 25 *Mad.* 7 *Ref.* 1938 O.W.N. 779
 — 61 *Ref.* 42 C.W.N. 729.
 — 103 (F.B.) *Disc.* I.L.R. 1938
Lah. 341, *Foll.* 40 P.L.R.
 196.
 — 166 *Ref.* 19 P.L.T. 309
 — 183 *Ref.* I.L.R. 1938 *Mad.*
 335.
 — 351 *Ref.* I.L.R. 1938 *Mad.*
 606—(1938) 1 M.L.J. 216
 — 389 *Ref.* I.L.R. 1938 Nag
 160
 — 519 *Ref.* I.L.R. 1938 Nag.
 255
 — 543 *Ref.* I.L.R. 1938 *Mad.*
 1031.
 25 *Mad.* 600 *Mentioned* (1938) 1
 M.L.J. 715
 26 *Mad.* 66 *Ref.* (1938) 1 M.L.J.
 519
 — 157 *Ref.* 42 C.W.N. 832.
 — 179 *Ref.* (1938) 1 M.L.J.
 325.
 — 243 *Ref.* I.L.R. (1938) 1
 Cal 299—42 C.W.N. 129
 — 287 *Foll.* 40 Bom L.R. 432.
 — 410 *Ref.* (1938) 2 M.L.J.
 434.
 — 419 *Appr.* 19 P.L.T. 461.
 — 450 *Ref.* 1938 Rang L.R.
 276.
 — 544 *Ref.* 42 C.W.N. 1157.
 — 570 *Ref.* I.L.R. 1938 *Mad.*
 923
 — 656 *Foll.* I.L.R. 1938 *Lah.*
 120
 — 673 (F.B.) *Foll.* (1938) 1
 M.L.J. 351
 — 686 (J.B.) *Ref.* (1938) 2
 M.L.J. 1039
 27 *Mad.* 21 *Ref.* I.L.R. 1938 All.
 209
 — 28 *Not Foll.* I.L.R. 1938
 Nag. 45.
 — 37 *Ref.* 13 Luck. 560.
 — 45 *Disc.* I.L.R. (1938) 2
 Cal 243; *Ref.* I.L.R.
 1938 Bom. 454; *Foll.*
 40 Bom L.R. 422.
 — 192 *Ref.* (1938) 2 M.L.J.
 623
 — 243 *Ref.* 40 Bom L.R. 381.
 — 271 *Not Foll.* I.L.R. 13
 Luck. 115.
 — 315 *Ref.* (1938) 1 M.L.J.
 63.
 — 435 *Ref.* 40 P.L.R. 319.
 — 538 *Ref.* 1938 Rang L.R.
 176.
 — 588 *Foll.* I.L.R. 1938
 Nag 280.
 28 *Mad.* 111 *Ref.* I.L.R. 1938 All.
 761—1938 A.L.J. 715.
 — 90 *Disc.* 19 P.L.T. 297.
 — 161 *Ref.* 42 C.W.N. 1058.
 — 314 *Ref.* I.L.R. 1938 *Mad.*
 1019—(1938) 2 M.L.J.
 756
 — 394 *Ref.* (1938) 2 M.L.J.
 76, 112.
 — 396 *Disc.* (1938) 1 M.L.J.
 135.
 — 539 *Ref.* (1938) 2 M.L.J.
 434
 29 *Mad.* 111 *Ref.* I.L.R. 1938
Mad. 933
 — 126 (F.B.) *Ref.* I.L.R.
 1938 *Mad.* 343
 — 151 (F.B.) *Foll.* (1938) 1
 M.L.J. 803
 — 232 *Ref.* 42 C.W.N. 1177.
 — 237 *Ref.* (1938) 1 M.L.J.
 817
 — 239 *Ref.* I.L.R. (1938) 1
 Cal 531—42 C.W.N. 422.
 — *Ref.* 42 C.W.N. 239
 29 *Mad.* 305 *Ref.* I.L.R. 1938
 Nag. 45.
 — 336 *Ref.* 42 C.W.N. 1028.
 — 372 *Ref.* 42 C.W.N. 222.
 — 375 *Disc.* 1938 Rang L.R.
 143
 — 539 *Disc.* 1938 A.L.J. 486.
 30 *Mad.* 62 *Disc.* 40 P.L.R. 33.
 — 75 *Ref.* (1938) 1 M.L.J. 56.
 — 126 (F.B.) *Ref.* (1938) 1
 M.L.J. 406
 — 255 *Ref.* I.L.R. 1938 *Lah.*
 582.
 — 464 *Disc.* I.L.R. 1938 *Lah.*
 148—40 P.L.R. 610.
 31 *Mad.* 43 *Ref.* 19 P.L.T. 655.
 — 47 *Ref.* 1938 O.W.N. 711.
 — 71 *Ref.* 42 C.W.N. 286.
 — 223 *Disc.* I.L.R. 1938 Nag.
 301.
 — 234 *Ref.* 40 Bom L.R. 411.
 — 231 *Ref.* I.L.R. 1938 Nag
 115.
 — 330 *Ref.* I.L.R. 1938 Bom.
 1.
 — 366 (F.B.) *Expt.* I.L.R.
 1938 *Mad.* 688—(1938) 1
 M.L.J. 298.
 — 431 *Ref.* 40 P.L.R. 605.
 — 442 *Foll.* I.L.R. 1938 *Mad.*
 52.
 32 *Mad.* 62 *Ref.* 1938 Rang L.R.
 243.
 — 141 *Foll.* (1938) 2 M.L.J.
 355
 — 167 *Ref.* (1938) 2 M.L.J.
 627
 — 248 *Ref.* 19 P.L.T. 51.
 — 284 *Disappr.* (1938) 1
 M.L.J. 526.
 — 291 *Ref.* (1938) 1 M.L.J.
 174
 — 330 *Ref.* 13 Luck. 199
 — 334 *Ref.* (1938) 2 M.L.J.
 1001
 33 *Mad.* 46 *Ref.* I.L.R. 1938
Mad. 348.
 — 82 *Ref.* I.L.R. (1938) 1
 Cal 35, (1938) 2 M.L.J.
 1033
 — 208 *Ref.* (1938) 1 M.L.J.
 406
 — 265 *Ref.* (1938) 2 M.L.J.
 85.
 — 308—20 M.L.J. 633 *over.*
 (1938) 1 M.L.J. 334 (F.B.)
 — 402 *Ref.* (1938) 2 M.L.J.
 651.
 — 452 *Ref.* 40 P.L.R. 319
 — 459 *Ref.* 13 Luck 554.
 34 *Mad.* 111 *Ref.* (1938) 1 M.L.J.
 386.
 — 12 *Foll.* I.L.R. 1938 Bom.
 184.
 — 25 *Ref.* 1938 Rang L.R.
 505.
 — 51 *Ref.* (1938) 1 M.L.J.
 806
 — 68 *Ref.* 40 Bom L.R. 937.
 — 76 *Ref.* I.L.R. 1938 Nag.
 280.

- 50 Mad. 639 Not Appr. (1938) : M.L.J. 316; Ref. I.L.R. 1938 All. 922.
 — 867 Expl. I.L.R. (1938) : Cal 719.
 — 882 Ref. (1938) : M.L.J. 193.
 — 897 Ref. I.L.R. 1938 Lah. 470.
 — 916 Foll. (1938) : M.L.J. 767.
 — 977 Rel. I.L.R. 1938 Mad. 897=(1938) : M.L.J. 467.
 — 981 Foll. I.L.R. 1938 All. 84; Ref. I.L.R. (1938) : Cal 132; (1938) : M.L.J. 179.
 51 Mad. 96 (P.C.) Foll. I.L.R. 1938 Nag. 308.
 — 180 Ref. (1938) : M.L.J. 344.
 — 237 Dist. I.L.R. 1938 All. 157.
 — 266 (F.B.) Ref. I.L.R. 1938 Mad. 381=(1938) : M.L.J. 57.
 — 347 Dist. I.L.R. (1938) Bom. 64, Not Foll. I.L.R. 1938 Nag. 370.
 — 361 Rel. I.L.R. 1938 Nag. 10.
 — 603 Ref. I.L.R. (1938) Nag. 208, 19 P.L.T. 21.
 — 610 Ref. I.L.R. 1938 All. 738=1938 A.L.J. 703.
 — 648 Ref. (1938) : M.L.J. 310.
 — 664 Rel. I.L.R. 1938 Nag. 106.
 — 701 Dist. I.L.R. 1938 Nag. 280.
 — 711 Rel. I.L.R. 1938 Nag. 221.
 — 777 Foll. 17 Pat. 9.
 — 778 (P.C.) Rel. 40 P.L.R. 29.
 — 815 Ref. 40 P.L.R. 616.
 — 849 Ref. (1938) : M.L.J. 613.
 — 862 Dist. I.L.R. 1938 Mad. 439.
 52 Mad. 105 Foll. 1938 Rang. L. R. 35.
 — 123 Ref. (1938) : M.L.J. 775.
 — 160 Ref. (1938) : M.L.J. 33.
 — 175 Rel. I.L.R. 1938 Nag. 364.
 — 194 (F.B.) Ref. I.L.R. 1938 Mad. 981.
 — 207 Ref. (1938) : M.L.J. 682.
 — 311 Rel. 40 P.L.R. 33.
 — 361 Ref. (1938) : M.L.J. 44.
 — 398 Ref. 40 Bom. L.R. 428.
 — 529 Ref. I.L.R. 1938 All. 875=1938 A.L.J. 943.
 — 538=1938 A.L.R. 1929 P.L.T. 152 Ref. 40 P.L.R. 573.
 52 Mad. 563 (F.B.) Ref. (1938) : M.L.J. 495.
 — 696 Ref. (1938) : M.L.J. 519.
 — 717 Expl. (1938) : M.L.J. 377, Ref. I.L.R. 1938 Mad. 72.
 — 809 Ref. I.L.R. (1938) : Cal 531=42 C.W.N. 422; Rel. I.L.R. (1938) : Cal. 354=42 C.W.N. 371.
 — 827 Ref. I.L.R. 1938 Lah. 47.
 — 866 Foll. (1938) : M.L.J. 589.
 — 899 Dist. 19 P.L.T. 119.
 53 Mad. 84 (F.B.) Rel. (1938) : M.L.J. 437.
 — 137 Dist. (1938) : M.L.J. 478.
 — 267 Ref. (1938) : M.L.J. 829.
 — 378 Ref. 13 Luck. 135; Rel. 1938 Bom. 273; Dist. 40 Bom. L.R. 507.
 — 581 Ref. 42 C.W.N. 523.
 — 688 Ref. I.L.R. 1938 Nag. 298.
 — 838 Disappr. I.L.R. 1938 All. 658; Foll. 42 C.W.N. 748.
 — 881 (F.B.) Rel. (1938) : M.L.J. 154.
 — 904 Dist. and Doubt. 17 Pat. 102=19 P.L.T. 176.
 — 943 Dist. (1938) : M.L.J. 829.
 54 Mad. : Foll. (1938) : M.L.J. 139; Ref. I.L.R. 1938 Mad. 1050=(1938) : M.L.J. 750.
 — 27 Ref. (1938) : M.L.J. 582.
 — 75 Ref. I.L.R. 1938 Mad. 348.
 — 132 Rel. (1938) : M.L.J. 325.
 — 269 Ref. (1938) : M.L.J. 704.
 — 315 Rel. 13 Luck. 81.
 — 469 Ref. 1938 A.L.J. 544.
 — 532 Ref. (1938) : M.L.J. 987.
 — 691 (P.C.) Ref. I.L.R. 1938 Mad. 25.
 — 793 Foll. (1938) : M.L.J. 340.
 — 900 Ref. (1938) : M.L.J. 829.
 — 931 Expl. 19 P.L.T. 86; Ref. (1938) : M.L.J. 618.
 55 Mad. 171 Cons. I.L.R. 1938 Mad. 335=(1938) : M.L.J. 22; Rel. 32 S.L.R. 138; I.L.R. 1938 Mad. 867=(1938) : M.L.J. 281; Appr. I.L.R. 1938 Mad. 909.
 — 251 Diss. 40 P.L.R. 522; Ref. I.L.R. 1938 Lah. 593.
 55 Mad. 262 Rel. I.L.R. (1938) : Cal. 447=42 C.W.N. 952; I.L.R. 1938 Mad. 545=(1938) : M.L.J. 81.
 — 316 Ref. I.L.R. 1938 Mad. 1063=(1938) : M.L.J. 471.
 — 332 Diss. I.L.R. 1938 Lah. 148=40 P.L.R. 640.
 — 343 Diss. 19 P.L.T. 665.
 — 385 Ref. I.L.R. 1938 Mad. 72=(1938) : M.L.J. 377.
 — 483 Rel. 40 Bom. L.R. 202; 40 P.L.R. 662.
 — 622 (F.B.) Ref. I.L.R. 1938 Mad. 343.
 — 657 Ref. I.L.R. 1938 Mad. 87.
 — 715 Rel. (1938) : M.L.J. 871.
 — 727 Rel. I.L.R. 1938 Nag. 54.
 — 835 Overr. I.L.R. 1938 Mad. 1007=(1938) : M.L.J. 128; Ref. 40 P.L.R. 712.
 — 848 Foll. (1938) : M.L.J. 589.
 — 883 (F.B.) Ref. (1938) : M.L.J. 68.
 — 903 Diss. 17 Pat. 15=19 P.L.T. 432.
 — 942 Foll. (1938) : M.L.J. 539.
 — 982 Diss. 1938 Rang. L.R. 651; Ref. I.L.R. 1938 Nag. 245.
 56 Mad. 134 Foll. I.L.R. 1938 Mad. 841=(1938) : M.L.J. 552 (F.B.).
 — 169 Diss. 1938 Rang. L.R. 216; 40 Bom. L.R. 1001;
 — Ref. I.L.R. (1938) : Cal. 607=42 C.W.N. 38; 1938 Rang. L.R. 430.
 — 177 Ref. 42 C.W.N. 321.
 — 198 Dist. I.L.R. 1938 Lah. 470; Foll. 1938 Rang. L.R. 385.
 — 323 Ref. (1938) : M.L.J. 235.
 — 339 Mentioned (1938) : M.L.J. 417.
 — 366 Ref. (1938) : M.L.J. 406; (1938) : M.L.J. 894.
 — 534 Diss. 40 Bom. L.R. 1029; Ref. (1938) : M.L.J. 715.
 — 657 Ref. 40 P.L.R. 319.
 — 692 Rel. (1938) : M.L.J. 394; Ref. I.L.R. 1938 Mad. 1003.
 — 705 Overr. I.L.R. 1938 Mad. 508=(1938) : M.L.J. 628 (F.B.); Ref. I.L.R. 1938 Mad. 1031.
 — 744 Rel. I.L.R. 1938 Nag. 106.
 — 833 Expl. I.L.R. 1938 Mad. 968.
 — 915 (F.B.) Foll. (1938) : M.L.J. 249.

- 57 Mad. 177 (F.B.) Disappr.
I.L.R. 1938 Bom. 331=
40 Bom.L.R. 277 (F.B.);
Ref. 19 P.L.T. 21.
308=65 M.L.J. 844 Cons.
(1938) 2 M.L.J. 1053.
347 Ref. 40 P.L.R. 300.
652 (P.C.) Rel. 40 P.L.R.
655; Reviewed 17 Pat.
507.
931 Ref. I.L.R. 1938 Mad.
1019.
951 Dist. I.L.R. 1938 Nag.
280.
1023 Not foll. I.L.R. 1938
Lah. 47.
58 Mad. 117 Dist. I.L.R. 1938
Lah. 289; Expl (1938) 2
M.L.J. 568.
118 Ref. 40 P.L.R. 60.
181 Ref. I.L.R. 1938 Mad.
360=(1938) 1 M.L.J. 268
(P.C.), 1938 Rang L.R.
480.
261 Ref. I.L.R. 1938 Mad.
933.
270 Dist. I.L.R. 1938 All.
861.
285 Ref. (1938) 1 M.L.J.
495.
357 Rel. I.L.R. 1938 Nag.
133.
418 Comm. 40 Bom L.R.
968; Ref. I.L.R. 1938
Lah. 148=40 P.L.R. 640;
40 P.L.R. 124.
513 Disappr. I.L.R. 1938
Mad. 902=(1938) 2 M.L.
J. 456.
781 Foll. I.L.R. 1938 Bom.
738=40 Bom.L.R. 929.
787 Disc. 1938 Rang L.R.
104.
794 (F.B.) Foll (1938) 2
M.L.J. 385.
802 Ref. (1938) 2 M.L.J.
987.
804 Ref. 42 C.W.N. 516.
972 (F.B.) Dist. (1938) 1
M.L.J. 829.
988 (F.B.) Cons. I.L.R.
1938 Mad. 39.
994 (F.B.) Foll. I.L.R.
1938 Mad. 451=(1938) 2
M.L.J. 404.
1038 Diss. I.L.R. 1938
Mad. 439.
59 Mad. 5 Ref. I.L.R. 1938 Mad.
381=(1938) 1 M.L.J. 257.
93 (F.B.) Dist. 40 P.L.R.
419.
175 Dist and Appl. 40
Bom.L.R. 343.
202 (F.B.) Foll. (1938) 1
M.L.J. 316, Disappr. I.L.
R. 1938 All. 922=1938 A.
L.J. 455; 19 P.L.T. 80.
268 Ref. I.L.R. 1938 Mad.
933; 17 Pat. 268=19 P.
L.T. 579.
349 Foll (1938) 2 M.L.J.
397.
59 Mad. 359 Dist. 40 Bom.L.R.
1001; Dist. 17 Pat. 154=
19 P.L.T. 500; Foll. I.L.
R. 1938 Nag. 206; Ref.
1938 Rang L.R. 430.
428-69 M.L.J. 832 Rel.
(1938) 1 M.L.J. 351.
412 Expl. and Dist. I.L.R.
1938 Mad. 313=(1938)
2 M.L.J. 360.
562 Ref. (1938) 2 M.L.J.
399.
660 Ref. I.L.R. 1938
Nag. 370.
603 Ref. (1938) 1 M.L.J.
715.
744 Not Foll. 19 P.L.T.
256.
872 Ref. (1938) 1 M.L.J.
351.
887 Appr. I.L.R. (1938) 1
Cal. 887.
905 Rel. (1938) 2 M.L.J.
910.
928 Dist. (1938) 1 M.L.J.
781; Ref. I.L.R. 1938
Mad. 1063; (1938) 1 M.
L.J. 471.
1020 (F.B.) Dist. I.L.R.
1938 Bom. 107=40 Bom.
L.R. 100.
I.L.R. 1937 Mad. 121 Foll (1938)
1 M.L.J. 487; 492.
263 Ref. 40 P.L.R. 867.
517 Rel. I.L.R. 1938 All.
252.
532 Ref. I.L.R. 1938 All.
252.
616 (F.B.) Foll. I.L.R.
1938 Mad. 326.
841 Ref. (1938) 2 M.L.J.
44.
990 Ref and Appr. I.L.R.
1938 Mad. 909=(1938) 2
M.L.J. 22.
I.L.R. 1938 Mad. 335 Cons. I.L.
R. 1938 Mad. 909.
545 Ref. (1938) 2 M.L.J.
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J. 337.
8 M.L.J. 148 Foll. (1938) 2 M.L.
J. 283.
9 M.L.J. 105 Ref. 40 Bom L.R.
365.
312 Foll. (1938) 2 M.L.J.
663.
11 M.L.J. 344 Ref (1938) 2 M.
L.J. 430.
12 M.L.J. 22 Ref. I.L.R. 1938
Mad. 381.
248 Mentioned 40 Bom L.
R. 411.
351 Ref. 13 Luck. 334.
14 M.L.J. 448 Ref. 40 P.L.R. 143.
17 M.L.J. 184 (P.C.) Disc. I.L.R.
1938 Mad. 696.
10 M.L.J. 155 Ref. (1938) 1 M.
L.J. 235.
456 Ref. (1938) 2 M.L.J.
523.
19 M.L.J. 62 Foll. I.L.R. 1938
Mad. 410.
21 M.L.J. 481 Diss. 1938 Rang.
L.R. 72.
23 M.L.J. 493 Cons. (1938) 2
M.L.J. 923.
505 Ref (1938) 2 M.L.J.
688.
638 Rel (1938) 1 M.L.J.
154.
24 M.L.J. 8 Disc. 19 P.L.T. 186.
36 Ref. (1938) 2 M.L.J.
434.
66 Ref (1938) 2 M.L.J.
33.
70 Ref. I.L.R. 1938 Lah.
582.
75 Ref (1938) 2 M.L.J.
663.
233 Ref. I.L.R. 1938 Mad.
1031.
405 Rel (1938) 2 M.L.J.
1039.
428 Diss (1938) 2 M.L.J.
501.
472 Foll. (1938) 1 M.L.J.
313.
693 Ref (1938) 2 M.L.J.
76.
25 M.L.J. 27 Foll (1938) 1 M.L.
J. 33, Rel (1938) 2 M.L.
J. 256.
50 Ref. (1938) 2 M.L.J.
829.
95 Ref (1938) 1 M.L.J.
113.
205 Ref (1938) 2 M.L.J.
44.
308 Ref. I.L.R. 1938 Mad.
72.
354 Foll (1938) 2 M.L.J.
283.
552 Not Foll. I.L.R. 1938
Lah. 403.
27 M.L.J. 239 Disappr. I.L.R.
1938 All. 904.
291 Rel. (1938) 2 M.L.J.
822.
482 Cons. 42 C.W.N. 1023.
587 Ref. (1938) 1 M.L.J.
817.
677 Ref. 13 Luck. 397;
(1938) 1 M.L.J. 514; Rel.
(1938) 1 M.L.J. 216=I.L.
R. 1938 Mad. 596.
28 M.L.J. 199 Dist. (1938) 2
M.L.J. 79.
30 M.L.J. 241 Ref. I.L.R. 1938
Mad. 1019.
391 Ref. 13 Luck. 689.
611 Ref. I.L.R. 1938
1063; Foll. (1938) 1
L.J. 471.

- 31 M.L.J. 207 Ref. I L.R. 1938
Mad. 819
—280 Foll. (1938) 2 M.L.J.
1013
—362 (P.C.) Ref. 42 C.W.N.
630.
—688 Ref (1938) 2 M.L.J.
846
—758 Diss. (1938) 1 M.L.J.
174
- 32 M.L.J. 354 Overr. I.L.R. 1938
Mad. 568 (F.B.).
—392 Ref I L.R. 1938 Nag.
54.
- 33 M.L.J. 316 Rel (1938) 2 M.L.
J. 430.
—355 Comm I.L.R. 1938
Mad. 381=(1938) 1 M.L.
J. 257.
—415 Rel (1938) = M.L.J.
244; 270
—481 Foll. I.L.R. 1938 Mad.
923.
- 35 M.L.J. 233 Foll. (1938) 2 M.L.
J. 936
- 36 M.L.J. 27 Ref. (1938) 1 M.L.
J. 485.
- 37 M.L.J. 369 Cons. and Diss.
(1938) 1 M.L.J. 378
- 39 M.L.J. 629 Foll. I.L.R. 1938
Mad. 888
- 40 M.L.J. 124 Appr. I.L.R. 1938
Mad. 819=(1938) 1 M.
L.J. 775
—289 Ref. 40 Bom. L.R. 1041
- 41 M.L.J. 75 Overr. I.L.R. 1938
Mad. 819=(1938) 1 M.L.
J. 775
- 42 M.L.J. 133 Foll. (1938) 2 M.L.
J. 664
—332 Foll. (1938) 2 M.L.J.
509
- 43 M.L.J. 728 Ref. I.L.R. 1938
Mad. 1031, Rel. 42 C.W.
N. 298.
- 44 M.L.J. 202 Ref (1938) 1 M.L.
J. 719
—357 Ref. and Appr. (1938)
1 M.L.J. 763.
—437 Ref. I.L.R. 1938 Mad.
988.
- 45 M.L.J. 389 Ref. 42 C.W.N.
1028.
—651 Concurr. 40 Bom. L.
R. 676.
- 46 M.L.J. 74 Rel. I.L.R. 1938
Nag. 206.
—145 Ref. (1938) 2 M.L.J.
511.
- 47 M.L.J. 448 Rel. (1938) 1 M.L.
J. 193.
—544 Appl. (1938) 1 M.L.J.
106.
—558 Foll. I.L.R. 1938 Mad.
888=(1938) 1 M.L.J. 634
- 48 M.L.J. 224 Expl. (1938) 1 M.L.
J. 113
—514 Ref. 42 C.W.N. 667;
Rel. I.L.R. 1938 Nag. 106.
—523 Ref. (1938) 1 M.L.J.
817.
- 48 M.L.J. 598 Ref. (1938) Rang.
L.R. 542.
- 49 M.L.J. 311 Ref. 42 C.W.N.
422; Rel. 42 C.W.N. 371.
—379 Not Appr. (1938) 1
M.L.J. 368.
—554 Diss. (1938) 2 M.L.J.
402
—602 Ref. I.L.R. 1938 Mad.
888
—616 Ref. (1938) 1 M.L.J.
715; Ref. and Dist (1938)
1 M.L.J. 471.
—656 Ref. (1938) 2 M.L.J.
430
—699 Diss. 40 Bom. L.R.
676
—753 Ref. (1938) 2 M.L.J.
1001.
—788 Ref. (1938) 1 M.L.J.
113.
- 50 M.L.J. 42 Foll. (1938) 2 M.L.
J. 1013; Rel. (1938) 2
M.L.J. 982
—665 Ref. (1938) 1 M.L.J.
471.
- 51 M.L.J. 90 Ref. (1938) 1 M.L.J.
610.
—443 Overr. (1938) 2 M.L.
J. 156; Dist. 1938 Rang.
L.R. 699.
—510 Foll. (1938) 1 M.L.J.
634; Ref. I.L.R. 1938
Mad. 888.
—508 Diss. (1938) 2 M.L.J.
663.
- 53 M.L.J. 142 Foll. I.L.R. 1938
Mad. 439
—176 Foll. I.L.R. 1938 Nag.
289
—179 Ref. (1938) 1 M.L.J.
582
—245 (P.C.) Rel. (1938) 1
M.L.J. 574
—769 Ref. (1938) 1 M.L.J.
519.
—810 Mentioned (1938) 1
M.L.J. 391.
—881 Ref. (1938) 1 M.L.J.
130.
- 54 M.L.J. 109 Ref. (1938) 1 M.L.
J. 582
—357 Ref. (1938) 1 M.L.J.
552
- 55 M.L.J. 142 Rel. (1938) 2 M.L.
J. 756.
—231 Ref. (1938) 2 M.L.J.
750.
—861 Ref. (1938) 2 M.L.J.
632
- 56 M.L.J. 141 Ref. (1938) 1 M.L.
J. 662.
- 57 M.L.J. 588 Diss. I.L.R. 1938
Mad. 523
- 58 M.L.J. 137 Ref. (1938) 2
M.L.J. 835.
- 59 M.L.J. 30 Disc. I.L.R. 1938
Mad. 479.
—321 Ref. (1938) 2 M.L.J.
585.
—596 Ref. (1938) = M.L.J.
95.
- 60 M.L.J. 302 Foll. (1938) 2 M.L.
J. 775.
- 61 M.L.J. 294 (P.C.) Expl. and
Dist. (1938) 1 M.L.J. 320.
—330 (P.C.) Expl. (1938) 1
M.L.J. 73; Ref. 40 P.L.
R. 685.
—518 Ref. (1938) 2 M.L.J.
179
—544 Diss. (1938) 2 M.L.J.
390.
- 62 M.L.J. 399 Ref. (1938) 2 M.
L.J. 894.
- 63 M.L.J. 303 Ref. I.L.R. 1938
Mad. 933.
—788 Ref. I.L.R. 1938 Mad.
326.
- 64 M.L.J. 148 (P.C.) Foll. (1938)
1 M.L.J. 33.
—382 Foll. (1938) 2 M.L.J.
362; Ref. 42 C.W.N. 554.
—715 (P.C.) Ref. (1938) 2
M.L.J. 244.
- 65 M.L.J. 173 (F.B.) Rel. I.L.R.
1938 Nag. 151.
—282 Ref. I.L.R. 1938 Mad.
688=(1938) 1 M.L.J. 298.
—334 Ref. (1938) 1 M.L.J.
769.
- 66 M.L.J. 412 Dist. (1938) 1
M.L.J. 824.
- 67 M.L.J. 30 Ref. I.L.R. 1938
Mad. 933.
—380 Foll. (1938) = M.L.J.
362.
—912 Ref. and Not Appr.
I.L.R. 1938 Mad. 933=
(1938) = M.L.J. 189.
—921 Ref. (1938) 2 M.L.J.
846.
- 68 M.L.J. 251 Ref. (1938) 2 M.
L.J. 756.
—392 Foll. (1938) 2 M.L.J.
1001.
—630 Rel. (1938) 1 M.L.J.
682.
- 69 M.L.J. 77 Ref. 1938 Rang. L.R.
305.
—221 Ref. (1938) 1 M.L.J.
325
—269 Ref. (1938) 1 M.L.J.
391.
—447 Rel. (1938) 1 M.L.J.
325
—479 Foll. (1938) 2 M.L.J.
1 M.L.
1 M.L.
- 70 M.L.J. 588 Diss. I.L.R. 1938
Mad. 523
- 71 M.L.J. 137 Ref. (1938) 2
M.L.J. 835.
- 72 (F.B.) Affirm. (1938)
1 M.L.J. 502 (P.C.).
—632 Affirm. (1938) 1 M.L.
J. 426

64 M.L.J. 673 Disapp. (1938) 2
M.L.J. 835.
65 Ref. (1938) 2 M.L.J.
516.
70 M.L.J. 162 Ref. (1938) 1
M.L.J. 834.
223 (P.C.) Expl. (1938) 1
M.L.J. 113.
424 Ref. (1938) 2 M.L.J.
623.
404 Ref. I.L.R. 1938 Mad.
381=(1938) 1 M.L.J. 257.
71 M.L.J. 39 Appr. I.L.R. 1938
Mad 335; Cons I.L.R.
1938 Mad 909=(1938) 2
M.L.J. 22.
166 Ref. (1938) 2 M.L.J.
846.
250 Ref. (1938) 2 M.L.J.
846.
260 Foll. (1938) 2 M.L.J.
355.
295 Reversed (1938) 1
M.L.J. 510.
476 P.C. Ref. I.L.R.
1938 Mad 318.
504 Appl. (1938) 1 M.L.J.
417, Rel. 32 S.L.R. 162.
518 Ref. (1938) 2 M.L.J.
33.
541 Ref. (1938) 1 M.L.J.
325.
574 Dist. (1938) 2 M.L.J.
244.
677 Ref. (1938) 1 M.L.J.
320, 750.
(1937) 1 M.L.J. 37 Ref. (1938) 1
M.L.J. 410.
89 Foll. (1938) 2 M.L.J.
647.
138 Appr. 40 Bom L.R.
322.
180 Ref. (1938) 1 M.L.J.
325.
231 Appr. and Foll. (1938)
2 M.L.J. 399.
364 Ref. I.L.R. 1938 Mad
696=(1938) 1 M.L.J. 216.
610 Ref. (1938) 2 M.L.J.
44.
637 Ret. I.L.R. 1938 Mad
439.
735 Ref. I.L.R. 1938 Mad.
867.
(1937) 2 M.L.J. 273 Ref. (1938)
2 M.L.J. 44.
466 Affirm. (1938) 2 M.L.
J. 1016.
569 Dist. (1938) 2 M.L.J.
31.
717 Ref. (1938) 2 M.L.J.
44.
885 Cons. I.L.R. 1938
Mad. 1100.
885 Ref. (1938) 2 M.L.J.
407.
906 Ref. I.L.R. 1938 Mad
696; (1938) 1 M.L.J. 216.
931 Ref. (1938) 2 M.L.J.
516.
(1938) 1 M.L.J. 710 Rel. (1938)
1 M.L.J. 715.

(1938) 2 M.L.J. 918 Appr. (1938)
2 M.L.J. 920.
977 Rel. (1938) 2 M.L.J.
923.

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17 M.L.T. 61 Ref. 42 C.W.N. 545.

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3 L.W. 466 Ref. and Appr. (1938)
2 M.L.J. 22.

551 Ref. (1938) 1 M.L.J.
606.

4 L.W. 128 Ref. I.L.R. 1938 Nag
21.

291 Dist. (1938) 1 M.L.J.
135.

5 L.W. 151 Ref. (1938) 1 M.L.J.
466.

9 L.W. 90 Ref. I.L.R. 1938 Mad.
811=(1938) 1 M.L.J. 552.

12 L.W. 7 Ref. (1938) 2 M.L.J.
923.

603 Foll. I.L.R. 1938 Mad.
841=(1938) 1 M.L.J. 552
(F.B.).

767 Cons. I.L.R. 1938
Mad. 841.

16 L.W. 197 Ref. (1938) 2 M.L.
J. 434.

970 Ref. I.L.R. 1938
Mad 696=(1938) 1 M.
L.J. 216.

17 L.W. 26 Ref. (1938) 1 M.L.
J. 139.

18 L.W. 29 Ref. I.L.R. 1938 Mad
1007.

20 L.W. 185 Ref. (1938) 2 M.L.J.
434.

943 Ref. I.L.R. 1938 Mad.
933.

21 L.W. 215 Ref. (1938) 1 M.L.
J. 715.

259 Cons. (1938) 2 M.L.
J. 923.

398 Not Foll. (1938) 1
M.L.J. 113.

606 Ref. (1938) 2 M.L.J.
399.

22 L.W. 347 Ref. I.L.R. 1938
Mad. 1050, (1938) 1 M.
L.J. 750.

23 L.W. 731 Expl. and Dist. I.L.
R. 1938 Mad 479.

25 L.W. 127 Not Foll. (1938) 1
M.L.J. 119.

299 Ref. (1938) 1 M.L.J.
406.

26 L.W. 527 Ref. (1938) 2 M.L.J.
835.

27 L.W. 370 Foll. I.L.R. 1938
Mad 621.

606 Cons. I.L.R. 1938
Mad 841.

30 L.W. 129 Ref. (1938) 2 M.L.J.
452.

583 Not Foll. I.L.R. 1938
Mad 888, Ref. (1938) 1
M.L.J. 634.

33 L.W. 384 Ref. I.L.R. 1938
Mad. 315; Rel. (1938)
1 M.L.J. 45.

35 L.W. 30 Ref. I.L.R. 1938 Mad.
696=(1938) 1 M.L.J. 216.
305 Cons. (1938) 1 M.L.J.
686.

36 L.W. 186 Expl. (1938) 1 M.L.
J. 119.

432 Ref. I.L.R. 1938 Mad.
933=(1938) 2 M.L.J. 189.

37 L.W. 288 Ref. (1938) 1 M.L.J.
574.

723 Ref. I.L.R. 1938 Mad.
933=(1938) 2 M.L.J. 189.

38 L.W. 843 Expl. (1938) 1 M.L.
J. 113.

40 L.W. 275 Appr. I.L.R. 1938
Mad 586=(1938) 1 M.
L.J. 334 (F.B.).

41 L.W. 224 Ref. I.L.R. 1938
Mad. 1019.

752 Foll. (1938) 1 M.L.J.
174.

42 L.W. 435 Ref. (1938) 1 M.L.J.
325.

564 Ref. (1938) 1 M.L.J.
495.

593 Not Foll. (1938) 1
M.L.J. 113.

626 Ref. (1938) 2 M.L.J.
977.

649 Dist. (1938) 1 M.L.J.
803.

43 L.W. 210 Expl. I.L.R. 1938
Mad 466=(1938) 2 M.L.
J. 651.

624 Ref. (1938) 1 M.L.J.
345.

44 L.W. 362 Foll. (1938) 1 M.L.
J. 450.

476 Ref. I.L.R. 1938 Mad.
968.

546 (P.C.) Ref. I.L.R.
1938 Mad. 688=(1938) 1
M.L.J. 298.

45 L.W. 93 Ref. I.L.R. 1938 Mad.
348.

276 Ref. (1938) 2 M.L.J.
44.

394 Ref. I.L.R. 1938 Mad.
1040.

422 Ref. I.L.R. 1938 Mad.
696=(1938) 1 M.L.J. 216.

767 Ref. and Appr. (1938)
2 M.L.J. 33=I.L.R. 1938
Mad. 968.

46 L.W. 587 Ref. (1938) 1 M.L.J.
487.

649 Foll. (1938) 2 M.L.J.
137.

904 Doubt. and Dist.
(1938) 2 M.L.J. 22.

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1912 M.W.N. 959 Ref. I.L.R.
1938 Mad. 988.

1913 M.W.N. 289 Ref. (1938) 1
M.L.J. 174.
673 Ref. 13 Luck 20.

- 1914 M.W.N. 197 Ref. (1938)
2 M.L.J. 434.
— 322 Ref. (1938) 2 M.L.J.
523.
— 481 Cons. (1938) 2 M.L.J.
270.
1915 M.W.N. 225 Cons. and
Appr. 42 C.W.N. 519.
— 751 Ref. (1938) 2 M.L.J.
688.
1917 M.W.N. 89 Ref. I.L.R. 1938
Lah 582.
1918 M.W.N. 340 Ref. (1938) 2
M.L.J. 829.
— 520 Ref. (1938) 1 M.L.J.
325.
1927 M.W.N. 645 Appr. I.L.R.
1938 Mad. 902.
1928 M.W.N. 127 Ref. (1938) 2
M.L.J. 623.
1930 M.W.N. 456 Ref. (1938) 2
M.L.J. 44.
— 1016 Ref. I.L.R. 1938 Mad
696— (1938) 1 M.L.J. 216.
1931 M.W.N. 1157 Ref. (1938) 1
M.L.J. 235.
1933 M.W.N. 548 Ref. (1938) 2
M.L.J. 152.
— 550 Foll. (1938) 1 M.L.J.
403.
— 648 Ref. (1938) 1 M.L.J.
769.
— 1457 Ref. (1938) 1 M.L.J.
519.
1934 M.W.N. 272 Foll. (1938) 1
M.L.J. 403.
— 371 Ref. 1938 Rang L.R.
104.
— 812 Disc. and Expl. (1938)
2 M.L.J. 461 (F.B.)
866.
1936 M.W.N. 1315 Ref. (1938)
2 M.L.J. 434.
1937 M.W.N. 654 Ref. (1938) 2
M.L.J. 44.
— 1068 Ref. (1938) 2 M.L.J.
866.
— 1193 Ref. 42 C.W.N. 932.

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HIGH COURT REPORTS.

- 1 M.H.C.R. 460 Ref. I.L.R.
1938 Nag 91.
2 M.H.C.R. 56 Cons. (1938) 2
M.L.J. 923.
4 M.H.C.R. 7 Ref. (1938) 2 M.L.
J. 523.
5 M.H.C.R. 161 Cons. (1938) 2
M.L.J. 923.
6 M.H.C.R. 28 Ref. I.L.R. 1938
Mad 639 (1938) 2 M.L.
J. 161.
— 122 Ref. (1938) 2 M.L.J.
44.
7 M.H.C.R. 233 Foll. (1938) 1
M.L.J. 767.
8 M.H.C.R. 83 Disc. I.L.R. 1938
Nag. 115.

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- (1891) 2 Weir 51 Ref. I.L.R.
1938 Lah. 640.
(1905) 1 Weir 497 Diss. 1938
Rang L.R. 63.
— 585 Foll. 1938 Rang L.R.
404.

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- 1 Luck 97 Ref. 13 Luck. 697.
— 215 (P.C.) Rel. I.L.R.
1938 Mad. 675; (1938) 1
M.L.J. 344.
— 350 Ref. 40 Bom.L.R.
947.
— 529 Appr. 65 I.A. 139;
1938 A.L.J. 301; (1938) 1
M.L.J. 731.
— 560 Ref. 13 Luck 470.
2 Luck 213 Rel. 13 Luck. 357.
— 261 Dist. I.L.R. 1938 Nag.
10.
— 408 Ref. 13 Luck. 689.
— 464 Dist. I.L.R. 1938 Nag.
280.
— 662 Foll. 13 Luck 365.
3 Luck. 76 Dist. 13 Luck 697.
— 472 Ref. 13 Luck. 470.
4 Luck. 13 Ref. 13 Luck. 484.
— 363 Dist. and Foll. I.L.R.
1938 All. 714; Rel. I.L.R.
1938 All. 218.
— 429 Diss. I.L.R. 1938 All.
1; Ref. 13 Luck 446;
42 C.W.N. 345.
— 480 Appr. 42 C.W.N. 545.
— 529 Ref. (1938) 1 M.L.J.
793.
5 Luck. 172 Overr. I.L.R. 13 Luck
101.
— 186 Ref. 13 Luck. 409.
— 280 Ref. 13 Luck. 135.
— 205 Ref. 40 P.L.R. 447;
Rel. 13 Luck. 470.
— 474 Ref. 13 Luck. 397.
— 532 (F.B.) Diss. 1938 A.L.
J. 955; 19 P.L.T. 80;
Ref. (1938) 1 M.L.J. 316;
I.L.R. 1938 All. 922.
— 702 Appr. I.L.R. 1938 All.
513.
6 Luck. 202 Rel. 13 Luck. 129.
— 282 Foll. 13 Luck. 697.
— 365 Ref. 1938 O.W.N. 338.
— 497 (F.B.) Dist. I.L.R.
1938 Nag. 10; Not Foll.
I.L.R. 1938 Nag. 136.
— 536 Ref. 13 Luck. 470.
— 730 Foll. 13 Luck. 697.
7 Luck 16. Ref. 13 Luck. 270.
— 321 Ref. 40 P.L.R. 447.
— 412 (P.C.) Rel. 32 S.L.R.
80.
— 563 Foll. 13 Luck. 697.
— 578 Ref. 42 C.W.N. 212.

- 8 Luck. 168 Foll. 13 Luck. 35;
Overr. 13 Luck. 101.
— 195 Foll. 13 Luck. 376.
— 217 Rel. 13 Luck. 129.
— 354 Ref. 1938 O.W.N. 547.
— 377 Ref. 13 Luck. 181.
— 477 Overr. 13 Luck. 20.
— 670 Ref. 13 Luck. 541.
— 731 Ref. I.L.R. 1938 Lah.
97; 40 P.L.R. 509.
9 Luck 178 Ref. 40 P.L.R. 146.
— 193 (F.B.) Rel. I.L.R.
1938 Nag. 409.
— 435 Rel. 13 Luck 340.
— 507 Ref. 13 Luck. 523.
— 670 Ref. 13 Luck. 181.
— 701 Reversed 65 I.A. 219.
10 Luck. 265 Foll. 13 Luck. 560.
— 281 Rel. 13 Luck. 115.
— 335 Reviewed 19 P.L.T.
21.
— 357 Rel. 13 Luck. 159.
— 407 Dist. 13 Luck. 181.
— 443 Rel. 13 Luck. 470.
— 569 Rel. 13 Luck. 397.
11 Luck. 106 Dist. 13 Luck. 279.
— 110 Rel. 13 Luck. 198.
— 148 Expl. I.L.R. 1938 Nag.
115.
— 241 Dist. 13 Luck. 246.
— 413 Rel. 13 Luck. 186.
— 428 Dist. 13 Luck. 279.
— 511 Referred I.L.R. 1938
All. 702.
12 Luck. 175 Rel. 13 Luck. 287,
544.
— 185 Ref. 13 Luck. 531.
— 324 Rel. 13 Luck. 380.
— 433 Ref. 13 Luck. 531.
— 630 Foll. 13 Luck. 86.
13 Luck. 287 Ref. 13 Luck. 568;
Rel. 13 Luck. 544.
— 344 Rel. 13 Luck. 577.

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- 1 O.C. 152 Foll. 1938 O.W.N. 181.
— 163 Appr. 1938 O.W.N.
62.
3 O.C. 173 Ref. 13 Luck. 669.
4 O.C. 163 Ref. 13 Luck. 409.
— 307 Ref. 13 Luck. 689.
11 O.C. 13 Ref. 13 Luck. 450.
9 O.C. 243 Dist. 1938 O.W.N.
306.
10 O.C. 136 Ref. 13 Luck. 409.
12 O.C. 279 Ref. 1938 A.L.J. 933.
— 288 (P.C.) Rel. 1938 O.
W.N. 355.
— 381 Ref. 1938 O.W.N.
561.
13 O.C. 260 Ref. 13 Luck. 672.
14 O.C. 74 Ref. 13 Luck. 138.
— 144 Ref. 1938 O.W.N. 462.
15 O.C. 511 Ref. 1938 O.W.N.
155.
16 O.C. 225 Ref. 1938 O.W.N.
722.
— 267 Ref. 13 Luck. 215.
17 O.C. 207 Ref. 13 Luck. 689.
18 O.C. 269 Foll. 1938 O.W.N.
67.

19 O.C. 75 Ref. 1938 O.W.N. 454.
20 O.C. 66 Ref. 13 Luck. 103.
— 104 Appl. 1938 O.W.N.
50.
— 244 Rel. 13 Luck. 697.
— 350 Ref. 13 Luck. 309.
21 O.C. 180 Ref. 13 Luck. 409.
— 257 Foll. 1938 O.W.N. 171.
23 O.C. 62 Ref. 13 Luck. 689.
— 310 Ref. 13 Luck. 309.
24 O.C. 151 Ref. 1938 O.W.N.
711.
25 O.C. 137 Dist. 1938 O.W.N.
673.
— 189 Ref. 13 Luck. 409.
26 O.C. 183 Appl. 1938 O.W.N.
59.
— 231 Dist. 13 Luck. 386.
27 O.C. 350 Ref. 13 Luck. 409.
28 O.C. 133 Ref. 1938 O.W.N.
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1 O.L.J. 380 Ref. 13 Luck. 409.
— 421 Ref. 13 Luck. 409.
3 O.L.J. 187 Ref. 13 Luck. 409.
— 317 Ref. 1938 O.W.N. 547.
4 O.L.J. 454 Ref. 13 Luck. 442.
5 O.L.J. 16 Dist. 1938 O.W.N.
306.
— 80 Ref. 13 Luck. 409.
6 O.L.J. 281 Ref. 13 Luck. 442.
— 696 Ref. 13 Luck. 409.
7 O.L.J. 17 Ref. 13 Luck. 167.
9 O.L.J. 649 Ref. 13 Luck. 409.
13 O.L.J. 126 Ref. 13 Luck. 409.

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1 O.W.N. 130 Rel. 13 Luck. 669.
— 311 Not Foll. 13 Luck. 560.
— 768 Dist. 13 Luck. 386.
2 O.W.N. 217 Ref. 13 Luck. 199.
— 894 Ref. 13 Luck. 409.
3 O.W.N. 475 Ref. 1938 O.W.N.
283.
— 576 Rel. 13 Luck. 676.
— 993 Ref. 1938 O.W.N. 268.
— 993 Expl. 1938 O.W.N.
355.
4 O.W.N. 320 Ref. 1938 O.W.N.
130.
— 419 Ref. 13 Luck. 13.
— 435 Ref. 13 Luck. 392.
— 770 Not Appl. 1938 O.W.N.
296.
— 993 Overr. 1938 O.W.N.
377.
— 1173 Ref. 1938 O.W.N.
706.
— 1192 Dist. 13 Luck. 230.
5 O.W.N. 606 Overr. 1938 O.W.N.
377.
— 677 Ref. 1938 O.W.N. 531.
— 932 Ref. 13 Luck. 167.
— 947 Ref. 13 Luck. 181.
6 O.W.N. 169 Ref. 1938 O.W.N.
67.
— 469 Dist. 13 Luck. 554.
— 526 Ref. 13 Luck. 13.
— 536 Appl. 1938 O.W.N.
454.
— 1073 Dist. 13 Luck. 680.

7 O.W.N. 271 Ref. 1938 O.W.N.
171.
— 382 Ref. 1938 O.W.N. 130.
— 507 Dist. 1938 O.W.N.
306.
— 541 Foll. 1938 O.W.N. 180.
— 676 Rel. 13 Luck. 484.
— 1159 Ref. 1938 O.W.N.
130.
8 O.W.N. 579 Ref. 1938 O.W.N.
130.
— 627 Ref. 1938 O.W.N. 429.
— 936 Rel. 1938 O.W.N. 429.
9 O.W.N. 130 Rel. 13 Luck. 697.
— 196 Ref. 1938 O.W.N. 138.
— 291 Ref. 13 Luck. 65.
— 379 Ref. 1938 O.W.N. 429.
— 387 Ref. 1938 O.W.N. 155.
— 430 Dist. 1938 O.W.N.
360.
— 610 Dist. 1938 O.W.N. 40.
— 687 Ref. 13 Luck. 659.
— 961 Dist. 13 Luck. 376.
10 O.W.N. 136 Ref. 13 Luck. 409.
— 366 Dist. 13 Luck. 143.
— 124 Rel. 13 Luck. 380.
— 571 Ref. 13 Luck. 353.
— 624 Ref. 1938 O.W.N. 454.
— 790 Foll. 1938 O.W.N.
475.
— 1151 Ref. 1938 O.W.N.
360.
11 O.W.N. 41 Rel. 13 Luck. 162.
— 104 Rel. 13 Luck. 266.
— 139 Ref. 1938 O.W.N. 489.
— 169 Ref. 1938 O.W.N. 779.
— 428 Ref. 1938 O.W.N. 130.
— 559 Dist. 13 Luck. 215.
— 562 Ref. 1938 O.W.N. 739.
— 619 Ref. 1938 O.W.N. 489.
— 653 Dist. 1938 O.W.N.
360.
— 825 Overr. 1938 O.W.N.
841.
— 828 Rel. 13 Luck. 126.
— 992 Ref. 1938 O.W.N. 218.
— 1071 Ref. 13 Luck. 365.
— 1081 Ref. 1938 O.W.N.
531.
— 1356 Dist. 1938 O.W.N.
561.
— 1475 Rel. 13 Luck. 484.
— 1487 Ref. 1938 O.W.N.
40.
— 1530 Dist. 1938 O.W.N.
360.
1933 O.W.N. 1134 Ref. 1938
O.W.N. 462.
— 1641 Foll. 13 Luck. 697.
1935 O.W.N. 297 Ref. 1938 O.
W.N. 40.
— 401 Ref. 1938 O.W.N. 40.
— 503 Rel. 13 Luck. 204.
— 654 Rel. 13 Luck. 310.;
— 1938 O.W.N. 779.
— 837 Ref. 1938 O.W.N. 360.
— 1045 Ref. 1938 O.W.N.
360.
— 1094 Ref. 1938 O.W.N.
763.; Rel. 1938 A.L.J. 628.

1935 O.W.N. 1151 Ref. 1938 O.
W.N. 561.
— 1196 Ref. 1938 O.W.N.
739.
— 1229 Ref. 13 Luck. 554.
— 1238 Overr. 1938 O.W.N.
401.
— 1249 Ref. 13 Luck. 13.
— 1376 Ref. 1938 O.W.N.
67.
1936 O.W.N. 185 Ref. 1938 A.L.
J. 258.
— 262 Ref. 1938 O.W.N. 722.
— 471 Foll. 13 Luck. 544.
— 877 Ref. 1938 O.W.N.
683.
— 892 Rel. 13 Luck. 115.
— 1158 Dist. 1938 O.W.N.
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— 171 Foll I.L.R. 1938 Nag.
409.
15 Nag L.R. 24 Foll I.L.R. 1938
Nag. 382.
— 60 Ref. I.L.R. 1938 Nag.
31.
16 Nag L.R. 23 Ref. I.L.R. 1938
Nag 298.
— 84 Dist. I.L.R. 1938 Nag.
302.
— 131 Ref I.L.R. 1938 Nag.
1.
— 221 Rel I.L.R. 1938 Nag
255.
17 Nag L.R. 1 Foll I.L.R. 1938
Nag 308.
18 Nag L.R. 67 Foll I.L.R. 1938
Nag. 41.
20 Nag L.R. 7 Dis. I.L.R. 1938
Nag. 333.
21 Nag L.R. 98 Overr. I.L.R.
1938 Nag. 171.
23 Nag L.R. 53 Ref I.L.R. 1938
Nag 151.
— 181 Disappr I.L.R. 1938
Nag 255.
24 Nag L.R. 68 Foll. I.L.R. 1938
Nag 233.
— 85 Dist. I.L.R. 1938 Nag
326.
25 Nag L.R. 104 Not Foll. I.L.R.
1938 Nag 395; Ref. I.L.R.
1938 Nag 151.
— 187 (F.B.) Ref. I.L.R.
1938 Nag 91.
26 Nag L.R. 125 Rel I.L.R. 1938
Nag 308.
— 300 Dist I.L.R. 1938 Nag
301.
— 309 Foll I.L.R. 1938 Nag.
149.
47 Nag L.R. 220 Rel I.L.R. 1938
Nag 370.
— 327 Rel I.L.R. 1938 Nag
280.
— 347 Foll. I.L.R. 1938 Nag
289.
28 Nag L.R. 221 Foll I.L.R. 1938
Nag 395.
— 208 Ref I.L.R. 1938 Nag
157.
29 Nag L.R. 70 Appl I.L.R. 1938
Nag 377.
— 125 Dis I.L.R. 1938 Nag
106.
— 295 Rel I.L.R. 1938 Nag
409.
30 Nag L.R. 29 Foll I.L.R. 1938
Nag 1.
— 186 Rel I.L.R. 1938 Nag
280.

31 Nag L.R. (Supp.) 101 Rel I.L.
R. 1938 Nag 283.
— (Supp.) 169 Disappr. I.L.
R. 1938 Nag. 206.
— 261 Foll I.L.R. 1938 Nag.
157.
— 315 Disappr. I.L.R. 1938
Nag. 260.
— 386 Rel I.L.R. 1938 Nag
215.
I.L.R. 1936 Nag 1 Foll I.L.R.
1938 Nag 54.
I.L.R. 1937 Nag. 191 (P.C.) Ref.
40 P.L.R. 308.
— 392 Rel I.L.R. 1938 Nag.
151.

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4 N.L.J. 85 Dist I.L.R. 1938 Nag.
326.
8 N.L.J. 31 Foll I.L.R. 1938 Nag.
326.
18 N.L.J. 283 Foll I.L.R. 1938
Nag 326.
19 N.L.J. 143 Dist. I.L.R. 1938
Nag. 136.
— 158 Ref I.L.R. 1938 Nag
157.

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8 C.P.L.R. 83 Ref I.L.R. 1938
Nag 91.
— 113 Ref I.L.R. 1938 Nag
91.
10 C.P.L.R. 65 Disappr I.L.R.
1938 Nag 115.
13 C.P.L.R. 1 Rel I.L.R. 1938
Nag 333.
— 69 Rel I.L.R. 1938 Nag.
330.
— 81 Rel I.L.R. 1938 Nag
229.

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3 S.L.R. (Cr.) 191 Ref. 32 S.L.R.
87.
6 S.L.R. 24, 72 Rel 32 S.L.R.
124.
11 S.L.R. 29 Ref 32 S.L.R. 87.
18 S.L.R. 75 Overr 32 S.L.R. 185.
20 S.L.R. 34 Foll 32 S.L.R. 30.
— 128 Foll 32 S.L.R. 134.
24 S.L.R. 385 Rel 32 S.L.R. 622.
— 439 Ref 32 S.L.R. 567.
25 S.L.R. 395 Ref 32 S.L.R. 622.
— 396 Rel 32 S.L.R. 567.
27 S.L.R. 3 Ref and Rel 32 S.L.
R. 567, 622.
— 36 Rel 32 S.L.R. 622.
— 142 Rel 32 S.L.R. 8.
28 S.L.R. 54 Rel 32 S.L.R. 134.
— 353 Expl. 32 S.L.R. 18.
29 S.L.R. 60 Foll 32 S.L.R. 134.
— 361 Rel 32 S.L.R. 80.
30 S.L.R. 314 Rel 32 S.L.R. 8.
31 S.L.R. 32 Expl and Rel 32
S.L.R. 215.
— 98 Dis 32 S.L.R. 138.
— 686 (P.C.) Rel 32 S.L.R.
622.
32 S.L.R. 567 Rel 32 S.L.R. 622.

1928 Lah. 43 Appr. 40 P.L.R. 6;
Dist. I L.R. 1938 All. 350
— 132 Disc. I L.R. 1938 Lah.
374
— 221 Dist. I L.R. 1938 Lah.
450
— 230 Dist. I L.R. 1938 Lah.
603
— 282 Foll. 17 Pat. 369.
— 348 Doubt and Dist. 42
C W N. 598
— 371 Rel. 1938 O.W.N. 758.
— 382 Appr. 40 P.L.R. 870
— 397 Foll. I L.R. 1938 Nag
233.
— 556 Rel. I L.R. 1938 Lah.
439.
— 668 Rel. 13 Luck. 357.
— 694 Ref. 40 P.L.R. 579
— 901 Not Foll. I L.R. 1938
Lah. 403.
— 918 Ref. 40 P.L.R. 201
— 954 Ref. I L.R. 1938 Lah.
277
1929 Lah. 34 Dist. 40 P.L.R. 91.
— 205 Rel. I L.R. 1938 Lah.
624
— 265 Rel. I L.R. 1938 Lah.
246.
— 276 Disappr. 40 P.L.R.
427
— 371 Rel. I L.R. 1938 Lah.
603.
— 399 Foll. 1938 O.W.N.
377
— 449 Foll. 40 P.L.R. 857.
Ref. (1938) 1 M.L.J. 193.
— 463 Ref. 40 P.L.R. 204
— 470 Rel. 40 P.L.R. 409
— 477 Foll. 1938 O.W.N. 475
— 485 Ref. 40 P.L.R. 672.
— 511 Ref. I L.R. 1938 Lah.
193 (F.B.)
— 513 Foll. 40 P.L.R. 245.
— 514 Ref. 13 Luck. 31.
— 526 Dist. 40 P.L.R. 91.
— 625 Ref. I L.R. 1938 Lah.
296.
— 630 Ref. 40 P.L.R. 532.
— 695 Ref. I L.R. 1938 Lah.
193 (F.B.).
1930 Lah. 80 Ref. 40 P.L.R. 38
— 99 Foll. I L.R. (1938) 1
Cal. 509
— 204 Ref. 13 Luck. 689.
— 327 Foll. 40 P.L.R. 48.
— 331 Disappr. 40 P.L.R.
772.
— 361 Appr. 40 P.L.R. 492.
Ref. 40 P.L.R. 558.
— 378 Rel. (1938) 1 M.L.J.
574.
— 392 Appl. I L.R. 1938 Lah.
296
— 605 Ref. I L.R. 1938 Lah.
581.
— 858 Ref. 40 P.L.R. 518.
— 905 Ref. 40 P.L.R. 20.
— 976 Foll. 40 P.L.R. 784.
— 978 Ref. 1938 A.L.J. 252
1938 O.W.N. 318.

1930 Lah. 985 Ref. (1938) 2 M.
L.J. 534
— 1004 Rel. I L.R. 1938 Lah.
221.
1931 Lah. 6 Rel. 40 P.L.R. 409.
— 68 Rel. 13 Luck. 463.
— 159 Diss. 40 P.L.R. 492.
— 344 Ref. 40 P.L.R. 128.
— 417 (2) Ref. I L.R. 1938
Lah. 271.
— 433 Ref. 40 P.L.R. 573.
— 504 Foll. I L.R. 1938 Lah.
571
— 608 Ref. I L.R. 1938 Lah.
470
— 614 Not Appr. I L.R. 1938
All. 288
— 631 (1) Ref. 40 P.L.R. 231.
— 717 Foll. I L.R. 1938 Nag
136
— 752 Ref. I L.R. 1938 Nag.
115.
1932 Lah. 7 Ref. 40 P.L.R. 872
— 39 Ref. 40 P.L.R. 188.
— 144 Dist. I L.R. 1938 Lah.
271
— 306 Rel. 13 Luck. 463
— 531 Dist. 40 P.L.R. 631.
— 655 Ref. 40 P.L.R. 833
1933 Lah. 148 Ref. — 148 Ref. —
— 149 Ref. 19
— 151 Dist. I L.
714, 1938
— 524 Ref. 40 P.L.R. 188
— 568 Rel. I L.R. 1938 Lah.
379
— 650 Foll. I L.R. 1938 Lah.
183.
— 866 Ref. 40 P.L.R. 188.
— 876 Dist. 40 P.L.R. 473.
— 933 Ref. 40 P.L.R. 6.
— 1010 Rel. I L.R. 1938 Lah.
411.
— 1050 Rel. I L.R. 1938
Lah. 173.
1934 Lah. 103 Ref. 40 P.L.R.
44
— 176 Rel. 13 Luck. 152.
— 229 Ref. 40 P.L.R. 573.
— 231 Disc. 1938 O.W.N.
561.
— 287 Ref. 40 P.L.R. 672
— 300 Ref. 40 P.L.R. 573.
— 395 Not Foll. I L.R. 1938
Lah. 582.
— 404 Ref. 40 P.L.R. 29.
— 460 Appr. 1938 O.W.N.
599
— 485 Ref. I L.R. 1938
271.
— 501 Foll. 40 P.L.R. 692.
— 604 Dist. 1938 O.W.N.
454.
— 638 Dist. I L.R. 1938 Lah.
603.
— 679 Dist. 40 P.L.R. 264.
— 684 Dist. 40 P.L.R. 91.

1934 Lah. 807 Rel. I L.R. 1938
All. 50.
— 909 (1) Diss. 40 P.L.R. 784.
— 913 Appr. I L.R. 1938 Lah.
332.
— 968 Ref. 40 P.L.R. 188;
Rel. 40 P.L.R. 465.
— 976 Ref. I L.R. 1938 Lah.
277.
— 979 Disappr. 40 P.L.R. 772.
— 993 Foll. 40 P.L.R. 48
— 1013 Rel. I L.R. 1938 Lah.
221.
1935 Lah. 11 Ref. I L.R. 1938 Lah.
271.
— 28 Appr. 40 P.L.R. 492.
— 32 Ref. 40 P.L.R. 432.
— 313 Not Foll. I L.R. 1938
Lah. 332
— 330 Ref. 40 P.L.R. 422.
— 401 Dist. 40 P.L.R. 772.
— 465 (F.B.) Ref. I L.R. 1938.
Mad 326.
— 543 Ref. 13 Luck. 65.
— 657 Dist. 40 P.L.R. 516.
— 666 Ref. 40 P.L.R. 82.
— 671 Dist. 17 Pat. 15.
— 686 Foll. 40 P.L.R. 111.
— 694 Ref. 40 P.L.R. 518
Lah.
Lah.
Lah.
246
— 917 Ref. 40 P.L.R. 422.
— 961 Ref. 13 Luck. 560.
1936 Lah. 5 Ref. I L.R. (1938) 1
Cal. 607.
— 87 Ref. 1938 O.W.N. 130.
— 124 Ref. 13 Luck. 380
— 139 Ref. I L.R. 1938 All.
563, 13 Luck. 380.
— 159 Ref. 40 P.L.R. 527.
— 167 Ref. 40 P.L.R. 38.
— 193 Foll. I L.R. 1938 Nag.
136.
— 200 Appl. 1938 O.W.N.
257.
— 205 Ref. 40 P.L.R. 29
— 387 Foll. I L.R. 1938 Lah.
148.
— 532 Disc. I L.R. 1938 Lah.
374.
— 538 Ref. I L.R. 1938 All.
805.
— 809 Ref. 40 P.L.R. 29.
— 836 Ref. I L.R. 1938 All.
638.
— 842 Dist. I L.R. 1938 Lah.
261.
— 861 Ref. 40 P.L.R. 403.
— 895 Ref. 40 P.L.R. 409.

- 1936 Lah. 517 Foll. I.L.R. 1938 All. 548.
- 1937 Lah. 52 Dist. I.L.R. 1938 Lah. 221.
- 73 Ref. 1938 A.L.J. 701.
- 113 Ref. 40 P.L.R. 509.
- 162 Disapp. I.L.R. 1938 All. 363; Ref. 1938 O.W.N. 318.
- 283 Foll. 40 P.L.R. 198.
- 403 Foll. 40 P.L.R. 772.
- 451 Ref. 40 P.L.R. 29.
- 640 Ref. 40 P.L.R. 29.
- 642 Appr. 40 P.L.R. 272; I.L.R. 1938 All. 363; Ref. 1938 O.W.N. 318.
- 653 Appr. I.L.R. 1938 Lah. 444.
- 759 Ref. I.L.R. 1938 Lah. 277.
- 1938 Lah. 84 Overr. 40 P.L.R. 64.
- 138 Ref. I.L.R. 1938 Lah. 506.
- 148 Reversed 40 P.L.R. 316.
- 207 Ref. 40 P.L.R. 712.
- 208 Ref. 40 P.L.R. 670.
- 253 Ref. 40 P.L.R. 718.
- A.I.R. (MADRAS).
- 1922 Mad. 259 Rel. I.L.R. (1938) 1 Cal. 531.
- 1923 Mad. 48 Ref. I.L.R. 1938 Lah. 97.
- 58 Appr. I.L.R. 1938 All. 350=1938 A.L.J. 159.
- 228 Ref. I.L.R. 1938 Lah. 188.
- 262 Foll. I.L.R. 1938 Nag. 233.
- 334 Ref. I.L.R. 1938 All. 767.
- 572 Foll. I.L.R. 1938 Nag. 27.
- 1924 Mad. 453 Ref. I.L.R. 1938 All. 767.
- 626 Dist. 40 P.L.R. 662.
- 1925 Mad. 62 Ref. 1938 A.L.J. 851.
- 174 Ref. I.L.R. 1938 All. 794.
- 456 Dist. 13 Luck. 242.
- 703 Ref. I.L.R. 1938 Lah. 586.
- 722 Ref. I.L.R. (1938) 2 Cal. 411.
- 743 Disc. 17 Pat. 191.
- 971 Dist. I.L.R. 1938 Nag. 308.
- 1021 Ref. 1938 A.L.J. 860.
- 1084 Dist. I.L.R. (1938) 1 Cal. 354; Rel. I.L.R. (1938) 1 Cal. 531.
- 1926 Mad. 187 Disc. I.L.R. (1938) 2 Cal. 559.
- 211 Ref. I.L.R. 1938 Lah. 582.
- 225 Appr. (1938) 2 M.L.J. 840.
- 325 Rel. 13 Luck. 246.
- 1926 Mad. 343 Ref. I.L.R. 1938 All. 513; 1938 O.W.N. 433.
- 345 Ref. (1938) 1 M.L.J. 769.
- 317 Ref. I.L.R. (1938) 1 Cal. 43.
- 654 Rel. 13 Luck. 246.
- 1066 Diss. (1938) 2 M.L.J. 664.
- 1087 Ref. I.L.R. 1938 All. 767.
- 1109 Dist. I.L.R. 1938 Nag. 308.
- 1148 Diss. I.L.R. 1938 Mad. 933=(1938) 2 M.L.J. 189.
- 1927 Mad. 38 Disc. I.L.R. 1938 Mad. 696=(1938) 1 M.L.J. 216.
- 83 Ref. I.L.R. 1938 Bom. 451.
- 84 Ref. 13 Luck. 157.
- 216 Ref. 40 P.L.R. 183.
- 441 Ref. 1938 O.W.N. 561.
- 790 Foll. 40 P.L.R. 469.
- 835 Foll. I.L.R. 1938 All. 922.
- 937 Foll. (1938) 2 M.L.J. 146.
- 981 Dist. I.L.R. 1938 Mad. 1063=(1938) 1 M.L.J. 471.
- 1023 Ref. 13 Luck. 450.
- 1001 Not Foll. (1938) 1 M.L.J. 113.
- 1928 Mad. 226 Appr. and Appl. (1938) 2 M.L.J. 501.
- 340 Ref. I.L.R. 1938 Mad. 381=(1938) 1 M.L.J. 257.
- 403 Appr. I.L.R. 1938 Mad. 326.
- 713 Ref. 13 Luck. 65.
- 810 Ref. 40 P.L.R. 670.
- 1085 Ref. 40 P.L.R. 498.
- 1194 Ref. I.L.R. 1938 Lah. 221.
- 1200 Ref. 13 Luck. 209.
- 1929 Mad. 7 Ref. 40 P.L.R. J. & K. 11.
- 60 (F.B.) Rel. 40 P.L.R. 821.
- 187 Cons. (1938) 2 M.L.J. 883.
- 291 Ref. 13 Luck. 255.
- 609 Ref. (1938) 1 M.L.J. 471.
- 622 Rel. (1938) 2 M.L.J. 478.
- 827 Ref. (1938) 1 M.L.J. 487.
- 841 Cons. 40 P.L.R. 69.
- Dist. I.L.R. 1938 Lah. 289.
- 1930 Mad. 30 Not Foll. 1938 A.L.J. 571.
- 136 Rel. 40 P.L.R. J. & K. 1.
- 154 Ref. 1938 O.W.N. 513.
- 168 Ref. I.L.R. 1938 Mad. 933=(1938) 2 M.L.J. 189.
- 251 Foll. 40 P.L.R. 709.
- 298 Ref. 13 Luck. 450.
- 476 Ref. 40 P.L.R. 166.
- 1930 Mad. 662 Ref. I.L.R. 1938 Mad. 696=(1938) 1 M.L.J. 216.
- 676 Ref. (1938) 2 M.L.J. 108.
- 1931 Mad. 828 Ref. 40 P.L.R. 38.
- 1932 Mad. 7 Ref. 1938 O.W.N. 779.
- 185 Disc. I.L.R. 1938 Nag. 382.
- 408 Foll. I.L.R. 1938 Nag. 289.
- 535 Appr. (1938) 2 M.L.J. 456.
- 577 Appr. I.L.R. 1938 Mad. 902=(1938) 2 M.L.J. 456.
- 734 Dist. 1938 O.W.N. 401.
- 1933 Mad. 112 Foll. 40 P.L.R. 819.
- 185 Diss. I.L.R. (1938) 2 Cal. 275.
- 314 Rel. I.L.R. 1938 Lah. 511.
- 316 Diss. (1938) 2 M.L.J. 402.
- 407 Not Foll. 40 P.L.R. 718.
- 429 Rel. 1938 A.L.J. 919.
- 655 Appr. I.L.R. 1938 All. 350.
- 883 Not Foll. 17 Pat. 281.
- 1934 Mad. 471 Rel. 13 Luck. 549.
- 630 Ref. 1938 A.L.J. 235.
- 683 Ref. (1938) 2 M.L.J. 094.
- 1935 Mad. 60 Dist. 19 P.L.T. 202.
- 145 Disc. I.L.R. 1938 Nag. 382.
- 161 Foll. 40 P.L.R. 25.
- 302 Dist. I.L.R. 1938 Lah. 289.
- 318 (2) Rel. 1938 O.W.N. 841.
- 347 Foll. 40 P.L.R. 469.
- 888 Rel. (1938) 2 M.L.J. 478.
- 1936 Mad. 64 Ref. (1938) 2 M.L.J. 179.
- 163 Appr. I.L.R. 1938 All. 157.
- 246 Rel. I.L.R. 1938 Lah. 289.
- 692 Ref. (1938) 2 M.L.J. 355.
- 801 Dist. 40 P.L.R. 473.
- 842 Ref. 13 Luck. 31.
- 1937 Mad. 1 Ref. (1938) 1 M.L.J. 181.
- 239 Rel. I.L.R. 1938 Lah. 417.
- 280 Diss. (1938) 2 M.L.J. 632.
- 301 Ref. 40 P.L.R. 501.
- 367 Appr. I.L.R. 1938 All. 363.
- 419 Ref. (1938) 2 M.L.J. 44.
- 431 Rel. (1938) 2 M.L.J. 478.
- 487 Foll. (1938) 2 M.L.J. 509.

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- 38 I.C. 139 Ref. 1938 A.L.J. 742.
—478 Ref. 17 Pat. 210
- 39 I.C. 378 Dist. I.L.R. 1938¹Mad
25.
—650 Not Foll. I.L.R. 1938
Nag. 149.
—753 Ref. 13 Luck. 96.
—766 Ref. 40 P.L.R. 413.
—888 Ref. 32 S.L.R. 162.
- 41 I.C. 9 Ref. 40 P.L.R. 97.
—348 Not Foll. I.L.R. 1938
Lab. 403.
—406 Ref. 1938 O.W.N. 806.
—495 Ref. 19 P.L.T. 485
- 42 I.C. 259 Ref. I.L.R. 1938 Lah.
582.
—793 Disappr. I.L.R. 1938
A. 513, Ref. 1938 O.W.N.
433.
- 43 I.C. 154 Foll. 1938 O.W.N.
480.
—280 Dist. I.L.R. 1938 Lah.
502.
—351 Ref. 42 C.W.N. 18.
—533 Ref. I.L.R. 1938 All.
35.
- 44 I.C. 333 Ref. 40 P.L.R. 422.
43 I.C. 585 Ref. I.L.R. 1938 All
538.
—513 Ref. 42 C.W.N. 18.
- 45 I.C. 465 Ref. 1938 O.W.N. 722.
—848 Ref. I.L.R. 1938 Lah.
251.
—964 Foll. 40 P.L.R. 479.
- 47 I.C. 639 Ref. 13 Luck. 162
49 I.C. 273 Ref. 1938 A.L.J. 668.
—734 Ref. 42 C.W.N. 1059
—752 Appr. I.L.R. 1938 All.
840.
—758 Ref. 40 P.L.R. 166.
- 50 I.C. 394 Appl. I.L.R. 1938 All.
114.
—847 Appr. I.L.R. 1938 All.
750
—886 Ref. I.L.R. 1938 Nag.
561.
- 51 I.C. 391 Dist. 1938 O.W.N.
454.
—501 Ref. 32 S.L.R. 8.
—963 Dist. 13 Luck. 115.
- 52 I.C. 749 Ref. I.L.R. 1938 Bom.
723.
53 I.C. 970 Ref. 40 P.L.R. 286.
54 I.C. 84 Ref. I.L.R. 1938 Mad.
933—(1938) 2 M.L.J. 189.
—241 Disc. 19 P.L.T. 461.
- 55 I.C. 19 Ref. 13 Luck. 96.
—226 Not Foll. (1938) 2 M.
L.J. 740.
—234 Ref. (1938) 1 M.L.J.
873.
—450 Ref. I.L.R. 1938 Lah.
103.
—481 Ref. 40 P.L.R. 280.
—763 Appr. 19 P.L.T. 240.
—983 Ref. 13 Luck. 76.
—990 Dist. I.L.R. 1938 Lah
417.
56 I.C. 47 Ref. (1938) 1 M.L.J.
610.
- 56 I.C. 259 Dist. 13 Luck. 373.
57 I.C. 248 Ref. I.L.R. 1938 Lah.
490.
—904 Ref. (1938) 1 M.L.J.
873.
—982 Ref. I.L.R. 1938 All.
500.
—998 Ref. 19 P.L.T. 380.
- 59 I.C. 655 Ref. I.L.R. 1938 Lah.
188
60 I.C. 310 Ref. 13 Luck. 531.
—520 Foll. 40 P.L.R. 506.
61 I.C. 628 Ref. 13 Luck. 242.
—774 Ref. I.L.R. 1938 All.
829.
—889 Ref. I.L.R. 1938 Nag.
342.
- 62 I.C. 1 (F.B.) Ref (1938) 1 M.
L.J. 113.
—180 Ref. I.L.R. 1938 Lah.
611.
—303 Ref. 13 Luck. 20.
—829 Ref. I.L.R. 1938 Mad.
988
—833 Ref. 13 Luck. 122.
- 63 I.C. 87 Ref. 40 P.L.R. 300.
64 I.C. 520 Ref. I.L.R. 1938 Lah.
296
—726 Ref. I.L.R. 1938 Nag.
160.
—751 Foll. 42 C.W.N. 405.
- 65 I.C. 305 (P.C.) Ref. I.L.R.
1938 Lah. 271.
—477 Ref. 40 P.L.R. 286.
—654 Ref. 13 Luck. 122.
- 66 I.C. 501 Ref. 13 Luck. 373.
67 I.C. 31 Ref. I.L.R. 1938 Lah.
173.
—76 Ref. I.L.R. 1938 Lah.
246.
—299 Foll. 40 P.L.R. 160.
—744 Appl. I.L.R. 1938 Lah.
296.
- 68 I.C. 182 Ref. 13 Luck. 96.
—188 Ref. 40 P.L.R. 280.
—412 Foll. I.L.R. 1938 Lah.
188.
- 69 I.C. 704 Ref. 19 P.L.T. 325.
70 I.C. 212 Ref. 19 P.L.T. 383.
—582 Ref. 40 P.L.R. 300.
- 71 I.C. 727 Ref. 42 C.W.N. 391.
—847 Ref. I.L.R. 1938 Lah.
103.
—937 Not Foll. I.L.R. 1938
Lah. 403.
- 73 I.C. 519 Ref. I.L.R. 1938 Lah.
611.
—902 Ref. 1938 O.W.N. 806.
- 74 I.C. 1 Ref. 13 Luck. 96.
—679 Ref. 19 P.L.T. 243.
- 75 I.C. 667 Ref. 13 Luck. 397.
—737 Ref. I.L.R. 1938 Lah.
251.
—917 Ref. 13 Luck. 157.
- 76 I.C. 25 Overr. I.L.R. 1938
Lah. 640.
—767 Not Foll. 17 Pat. 281.
- 77 I.C. 888 Ref. I.L.R. 1938 Lah
188.
78 I.C. 232 Dist. 13 Luck. 357.
—270 Ref. 13 Luck. 531.
—443 Ref. 40 P.L.R. 54.
—919 Dist. (1938) 1 M.L.J.
450.
- 79 I.C. 66 Foll (1938) 1 M.L.J.
450.
—894 Ref. 13 Luck. 689
- 81 I.C. 176 Ref. 19 P.L.T. 665.
—343 Ref. 42 C.W.N. 729.
- 82 I.C. 970 Ref. 19 P.L.T. 380
83 I.C. 133 Ref. 19 P.L.T. 383.
84 I.C. 698 Ref. I.L.R. 1938 All.
767.
—952 Ref. 13 Luck. 96.
- 85 I.C. 366 Dist. 1938 O.W.N.
841.
—459 Foll. 17 Pat. 308.
—594 Ref. 42 C.W.N. 1209
—1010 Foll. 17 Pat. 84.
- 87 I.C. 688 Ref. 19 P.L.T. 383.
—652 Ref. 40 P.L.R. 97.
—1017 Ref. 40 P.L.R. 1431
300.
- 88 I.C. 1049 Dist. 40 P.L.R. 757.
89 I.C. 437 Ref. 40 P.L.R. 74.
—596 Ref. 13 Luck. 96.
—956 Ref. 40 P.L.R. 74.
—977 Foll. I.L.R. 1938 Nag.
160.
- 90 I.C. 621 Disc. 19 P.L.T. 352.
—774 Dist. 19 P.L.T. 240;
Ref. 42 C.W.N. 18.
- 91 I.C. 657 Ref. 42 C.W.N. 967.
92 I.C. 980 Ref. I.L.R. 1938 Lah.
103.
93 I.C. 688 Foll. 40 P.L.R. 798.
—956 Dist. I.L.R. 1938 Lah.
173.
- 94 I.C. 168 Ref. I.L.R. 1938 Lah.
296.
—444 Foll. I.L.R. 1938 Nag.
348.
—707 Dist. 1938 O.W.N.
841.
- 95 I.C. 79 Ref. 40 P.L.R. 501.
97 I.C. 417 Ref. 40 P.L.R. 501.
—437 Ref. 13 Luck. 344.
—441 Ref. I.L.R. 1938 Lah
296.
—604 Disc. 19 P.L.T. 456.
- 98 I.C. 75 Ref. I.L.R. 1938 All.
741.
—599 Disc. 19 P.L.T. 297.
- 100 I.C. 241 Ref. 40 P.L.R. 819.
—917 Ref. 40 P.L.R. 544.
- 101 I.C. 277 Foll. 42 C.W.N.
1053.
—647 Dist. 42 C.W.N. 378.
—674 Foll. 40 P.L.R. 631.
- 102 I.C. 9 Dist. 40 P.L.R. 91.
—620 Dist. 40 P.L.R. 631.
—832 Ref. I.L.R. 1938 Lah.
345.
103 I.C. 38 Ref. I.L.R. 1938 Lah.
10.

- 103 I.C. 454 Ref. 40 P.L.R. 591.
 104 I.C. 335 Ref. I.L.R. 1938 Lab.
 10.
 — 630 Ref. I.L.R. 1938 Mad.
 348.
 105 I.C. 58 Ref. 17 Pat. 210.
 107 I.C. 4011 Dmapp. (1938) 2
 M.L.J. 33.
 108 I.C. 398 Ref. 19 P.L.T. 268.
 110 I.C. 463 Ref. 1938 O.W.N.
 595.
 — 571 Dm. 42 C.W.N. 1028.
 111 I.C. 160 Dm. 19 P.L.T. 432.
 — 433 Dm. 42 C.W.N. 674.
 112 I.C. 402 Foll. 40 P.L.R. 630.
 — 670 Ref. 40 P.L.R. 74.
 113 I.C. 240 Dm. 19 P.L.T. 352.
 — 263 Ref. 1938 A.L.J. 608.
 116 I.C. 632 Ref. 19 P.L.T. 21.
 118 I.C. 392 Ref. 13 Luck. 96.
 119 I.C. 423 Dm. I.L.R. 1938
 Lab. 318.
 123 I.C. 412 Not Foll. 19 P.L.T.
 566.
 125 I.C. 33 Rel. I.L.R. 1938 Lab.
 435.
 — 100 Dm. 40 P.L.R. 22.
 126 I.C. 650 Foll. 42 C.W.N.
 1164.
 127 I.C. 641 Not Foll. 42 C.W.N.
 18.
 128 I.C. 920 Foll. 40 P.L.R. 151.
 129 I.C. 224 Ref. 40 P.L.R. 501.
 131 I.C. 456 Rel. 40 P.L.R.J. & K.
 1.
 132 I.C. 6 Ref. 40 P.L.R. 432.
 — 209 Rel. I.L.R. 1938 Lab.
 485.
 133 I.C. 615 Ref. 40 P.L.R. 300.
 134 I.C. 254 Foll. (1938) 2 M.L.J.
 846.
 136 I.C. 205 Foll. I.L.R. 1938
 Nag. 233.
 139 I.C. 106 Expl. 19 P.L.T. 461.
 — 589 Rel. I.L.R. 1938 Lab.
 221.
 140 I.C. 544 Ref. 19 P.L.T. 21.
 141 I.C. 707 Ref. 19 P.L.T. 579.
 — 825 Dm. I.L.R. (1938)
 Lab. 341; Foll. 40 P.L.R.
 196.
 142 I.C. 552 Ref. 40 P.L.R. 92.
 143 I.C. 635 Ref. 13 Luck. 428.
 145 I.C. 687 Dist. I.L.R. 1938
 Lab. 511.
 146 I.C. 239 Appr. I.L.R. 1938
 Lab. 155.
 — 566 Disc. and Not Foll.
 19 P.L.T. 8.
 147 I.C. 794 Reviewed 19 P.L.T.
 21.
 151 I.C. 294 Disc. I.L.R. 1938
 Lab. 148.
 — 316 Not Foll. 19 P.L.T.
 101.
 152 I.C. 541 Foll. I.L.R. 1938
 Nag. 233.
 153 I.C. 717 Ref. 42 C.W.N. 38.
 154 I.C. 948 Reviewed 17 Pat.
 236.
 — 985 Ref. 13 Luck. 20.
 156 I.C. 402 Ref. 19 P.L.T. 8.
 158 I.C. 24 Ref. 40 P.L.R. 819.
 159 I.C. 350 Not Foll. 19 P.L.T.
 133.
 163 I.C. 152 Ref. 42 C.W.N. 1232.
 164 I.C. 305 Ref. 19 P.L.T. 8.
 165 I.C. 720 Dist. 42 C.W.N. 618.
 167 I.C. 941 Appr. I.L.R. 1938
 All. 192.
 170 I.C. 33 Dist. 42 C.W.N. 1216.
 172 I.C. 697 Ref. 42 C.W.N. 1216.

I—INDIAN DECISIONS.

¶ persons meet and agree not to ascertain the exact balance due on accounts, but agree to take a gross sum as the balance, which one is willing to pay and the other is content to receive, it is obvious that the production of vouchers is entirely out of the question, for the very object of the parties is to avoid the necessity for producing these vouchers. But when one of the parties to the transaction has just attained the bare age of majority, and the other party stands in a fiduciary relationship, the Court will jealously watch such a transaction, and it is the duty of the party standing in fiduciary relationship to make a full disclosure of the state of the account. The latter must affirmatively prove that the weaker party was a free agent and had independent and disinterested advice. Where it is established that the weaker party had competent and independent advice, and that there was neither importunity nor persuasion on the part of the other party, who was prepared to produce all the accounts, but that the party who had just come of age was, though young, very shrewd and dispensed with the production of the

ADMINISTRATION.

estate, as to the lines the administration ought to take and the only other decree which can be passed in administration is the final decree, which will allot out of the assets remaining in the hands of the Court or the administrator the various shares to the parties entitled to receive them. Hence after the preliminary decree, a supplementary decree cannot be passed by the Court on the application of a creditor (*Baguley and Moseley, J.J.*) A.T.N.A.T. CHOCKALINGA CHETTIAR v. KO MAUNG GYL.

A.I.R. 1938 Rang. 37.

—Suit for—Party claiming less share in plaintiff's Right to proper share

share being awarded to him in the judgment. (*Moseley and Dunkley, J.J.*) OON CHAN THWIN v. KHOO ZUN. 177 I.C. 501—11 B.E. 134—A.I.R. 1938 Rang. 254.

ADMISSION—Waiver—Difference between

There is a distinction in law between waiver and admission, in the case of waiver a person is held to have waived a right of which he is ignorant, but in the case of a representation which is acted on, the party must plead ignorance unless it is induced by fraud or for if he does not choose to enquire he takes the risk of error. (*Lord Thackerston.*) SHYAM SUNDAR SINGH v. KALURAM AGARWALA.

176 I.C. 2—42 O.W.N. 1041—19 Pat. L.T. 561—

48 L.W. 199—1938 M.W.N. 814—

1938 O.L.R. 344—1938 A.W.R. (P.C.) 186—

68 O.L.J. 145—1938

1938 A.L.R. 872—

1938 F.W.N. 612—

ADVERSE POSSESSION.

See also (1) LANDLORD AND TENANT.

(2) LIMITATION ACT, ART. 144

Acquisition of title.

Acts of possession and nature of.

Co-owners.

Co-sharers.

Essentials.

Guardian and ward.

Hindu widow.

In eruption.

Landlord and tenant.

Limited interest.

Mortgage right.

Religious endowment.

Vacant land. See Adverse Possession—Essentials.

Title.

Void alienation—Possession under.

Wakf property.

Waste land.

What constitutes.

—Acquisition of title—Khoti land—Wrong transfer by occupancy tenant—Possession by transferee for over 12 years—Effect. See BOMEAY KHOTI SETTLEMENT ACT, SE. 5 AND 8. 40 Bom L.R. 390.

—A question of title—Possession in pursuance of settlement of disputes between brothers—No dispute for nearly 50 years—Possession ripening into ownership.

Where in settlement of a dispute between two brothers as to the succession to an estate, the younger brother was given certain properties by way of maintenance and

ADVERSE POSSESSION.

representatives had been adverse to the younger brother and his representatives for more than the period of 12 years, it was held that the title remained to the younger brother and his representatives for more than the period of 12 years.

must vary with the session to be exercised (*Mehra, J.*) TAHIL.

176 LC 549—11 B.E. 22—A.I.R. 1938 Sind 132.

—Co-owners—Hostile possession by one—What amounts to.

Where one co-owner asserts a title hostile to his co-owners, he must do so by an open and unequivocal assertion of a hostile title. The possession must be adverse to the co-owners and must be exclusive.

A.I.R. 1938 Sind 132.

—Co-sharers—Exclusive possession of some—Effect of—Ouster—Partition—If amounts to.

The exclusive possession of co-sharers cannot be adverse to a person who is also a co-sharer with them. Mere partition between co-sharers does not ouster any of his title or his co-sharer. (*MADRI.*)

A.I.R. 1938 Nag. 89.

—Essentials—Continuous possession—What is.

In order to give title as against the rightful owner, adverse possession must, among other things, be continuous. Overt acts of possession are only evidence from which adverse possession has to be inferred. Merely because the acts are separate, it does not follow the possession was not continuous. There is a difference between cessation of user and cessation of possession and the one does not necessarily lead to the other. Where for more than the statutory period, the adverse possessor not only treated the disputed land as his own but intended to exclude the others including the rightful owner from possession, and whenever an occasion arose it was the adverse possessor who exercised possession and not the rightful owner, the facts give rise to an inference of title by adverse possession in spite of the gaps in the evidence as to acts of possession during the aforesaid period. (*S.K. Ghose and Patterson, J.J.*) BHABANI PRASAD LAHIRI v. MANINDRA CHANDRA ROY.

42 O.W.N. 1209.

—Essentials of—Vacant land—Exclusion of owner—Inference as to adverse possession, when justified—Application of rule as to possession following title.

Possession cannot be adverse unless it is held in such a manner as to be adverse to the owner.

possession cannot be adverse unless the owner is in denial of his title excluded from enjoyment. Possession to be adverse must be notorious, exclusive and

ADVERSE POSSESSION.

hostile. In the case of a vacant land the same kind of possession cannot be expected as in the case of an occupied land or building and where there is no effective intrusion the Court will be justified in giving effect to the principle of law that possession follows title. (*Venkatesh Rao and Ashur Rahman, J.J.*) ATCH

AYYA PATKUDU s. JALALUDDIN SAHIB.

178 I C. 501 = (1938) M.W.N. 185 - 47 L.W. 202 =

A.I.R. 1938 Mad. 451 = (1938) 1 M.L.J. 190.

Guardian and Ward—Possession of guardian—If adverse to ward.

Where a guardian is in possession of ward's property

Tag 59.

Hindu widow—Possession of mother-in-law—When on behalf of widow—If adverse.

Where a Hindu dies leaving his widow, and her mother-in-law takes possession of the property, it is

possession only on behalf of her daughter-in-law. (*Varadachariar and King, J.J.*) RAMAYYA v. LAKSHMAIYA.

177 I C. 225 = 11 R.M. 276 =

(1938) M.W.N. 1032 - A.I.R. 1938 Mad. 613.

Hindu widow—Possession of—If can be adverse to reversioners.

Where a widow takes possession of the property after the death of the last male holder as a Hindu widow with a limited estate and there is nothing to show that the character of her title or possession was altered at any time, such possession could not be adverse to her husband's reversioners and any rights which she acquires by reason of her possession as to the estate of her husband to which reversioners are entitled to succeed.

possession therefore cannot be tacked on to that of her alienee (*Coldstream and Din Mohanmad, J.J.*) GANGA RAM v. NAUKATA RAM.

40 P.L.R. 616 = A.I.R. 1938 Lah. 187

Interruption—Attachment—Twelve years' possession not complete on date of attachment.

Effect—Suit by claimant after expiry of period—Plea by adverse possession—Succ.

CODE, O 21, R 63

Interruption—Boundary Survey Officer—If interrupts unsuccessful claimant—Right of possession in subsequent suit.

AND BOUNDARIES ACT, S 13. 48 L.W. 595.

Interruption—Party in adverse possession held to be the rightful owner in suit—Effect of—Appellate Court holding possession wrongful—Party continuing in possession—Adverse possession—If interrupted by decree of trial Court.

Where a person is in wrongful possession of another's land to the latter's exclusion and to his knowledge, the former is in adverse possession of the land. The fact that a subsequent decree of Court declares the person in possession is the owner of the property ground for holding that he is in possession and decree of Court. Possession which was adverse that decree still remains adverse. Merely because wrong order is made by the trial Court recognising possession—even though that possession is held to be wrongful by the final decision on appeal—the possession which was adverse before does not cease to be adverse

ADVERSE POSSESSION.

by reason of the decree in the trial Court. (*Rangnagar and Wadia, J.J.*) NARAYAN JIVAJI v. GURUNATH-GOUDA. 40 Bom L.E. 1134.

Interruption—What amounts to entries in record of rights, or receipts for assessment—Effect of.

Whether continuity of the possession be broken by flood or by draught, or because the nature of the land itself is such that it is not susceptible of continued acts of user or possession, once there is a breach in the continuity of adverse possession, the chain of years is broken and the land reverts to its rightful owner.

In a suit for adverse possession of certain Maho-

be, for grazing purposes and appropriated the grazing fees. Such possession by the plaintiff was for more than the statutory period. No ejectment suit was ever brought. But the defendant, who was entitled to such lands by sale, got entries made, got receipts for the payment of assessment, for payment of boundary marks, got commutation money when some land was acquired by Government, and got the entries made in the Record of

held, that the defendant's possession was paper possession only, and the plaintiff had acquired a title by adverse possession. (*Davis, J.C. and Mehta, J.*) TAHILRAM TACKCHAND v. MT. MIRAL.

176 I C. 549 = 11 R.S. 29 = A.I.R. 1938 Sind. 132.

Landlord and tenant—Death of a tenant at will

Suit against son for possession—Plea of adverse possession—Starting point.

In the case of a tenancy at will, the possession of the tenant becomes that of a wrongdoer as soon as the tenancy terminates. Where such a tenant died and the landlord sued his son it was held that the tenancy was

'was nothing had the right (Stone C.J.)

and *Moh. J. J. KADUL NARAYAN v. KESHU NANDLAL*. 1938 M.L.J. 317 = A.I.R. 1938 Nag. 506.

Landlord and tenant—Essentials—Adverse possession against tenant—Effect as against landlord.

To establish adverse possession against a landlord it

A.I.R. 1938 Pat. 220.

Landlord and tenant—Permanent tenancy—Acquisition of—Essentials—Assertion by tenant—Adjudication in judicial proceeding—Effect of.

A permanent tenancy right can be acquired by adverse possession. In such a case it is enough for the tenant pleading adverse possession to show that he continued in open and hostile possession for over the statutory period after asserting his right in an earlier judicial

Landlord and tenant—Sub-lessee from tenant under unauthorised transfer—Possession of—Adverse to landlord.

ADVERSE POSSESSION.

AGRA PRE-EMPTION ACT (1922), S. 4.

... But this does not constitute a valid title to the land in question over twelve years of such adverse possession, as the title is not on Mahomedan law.

... But this does not constitute a valid title to the land in question over twelve years of such adverse possession, as the title is not on Mahomedan law.

COMMITTEE, AMRITSAR, 175 I.C. 945 = 11 B.L. 91 = 40 P.L.R. 319 = A.I.R. 1938 Lah. 369 (P.B.).

—Waste land—Construction of temporary chhappars.

... the construction of some temporary chhappars on a waste land which is lying waste is not sufficient in law to constitute adverse possession, although such chhappars are surrounded by an enclosure consisting of bushes. (*Bhidi, J.*) **SHAH NIWAZ v. GHULAM SHAH.** 40 P.L.R. 91 = 176 I.C. 930 = 11 B.L. 251 (1) = A.I.R. 1938 Lah. 329.

—What constitutes—Hindu in possession of mosque for over 12 years—User inconsistent with the character of the building—Abandonment—Plea of ignorance—If available.

Where a Hindu has been in possession of the building of a mosque for over 12 years and has been exercising user inconsistent with the character of the building of a mosque, the building of a mosque is not available.

—Limited interest—Landlord and tenant—Suit for rent—Plea of rent-free holding—Decree holding land rent free—Effect of—Possession by tenant for over 12 years without paying rent—Acquisition of rent-free tenure. See C. P. CODE, § 11. 48 L.W. 701 = (1938) 2 M.L.J. 931.

—Mortgage right—Acquisition by mere oral assertion.

A contract cannot be brought into existence by prescription, and no one can, by mere oral assertion, acquire rights against a true owner. (*Wari, A.C.J. and Manohar*) **MIAN v. RADHIKA KUMARI DE** 176 I.C. 35 = 11 B.L. 251 (1) = A.I.R. 1938 P.W.N. 783.

—Religious endowment—Exclusion of shebait by person having no title—Physical presence of idol or performance of puja by wrongdoer—If material.

An idol acts through its shebait, prosecutes and defends suits through its shebait. Its shebait is its protector and defender of its rights. An exclusion of shebait accordingly from the endowed properties has the effect of excluding the idol from it. In cases of adverse possession, the extent of the interest is determined by the nature of the demand upon the owner.

abandonment. It is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running ought, if he exercises due vigilance, be aware of what is happening.

they remain unaware of acts of misuse by the owner of the mosque in which the mosque is situated, it is not enough for them to say that by the exercise of due vigilance they could not be aware of what is happening. (*and Venkatesh, J.*) **MUSAIHER KHAN v. ...** 1938 O.A. 722 = O. 62 = 1938 O.L.R. 435 = 1 = A.I.R. 1938 Oudh 238.

MADRAS AND VIZAGAPATAM.

ACT ACT, §§ 187 AND 237.

LEGAL AGENT,

(XI OF 1922), S. 4.

In Revenue Papers.

the meaning of the Agra Pre-emption Act, a person who has a share in the land.

... of a ... of a ... matter ... shal.

(*1938 Ahmad, J.*) **PHUL CHAND v. DHARAM CHAND.** 175 I.C. 603 = 10 R.A. 698 = 1938 A.L.R. 463 = 1938 A.W.R. (H.C.) 164 = 1938 R.D. 491 = 1938 A.L.J. 325 = A.I.R. 1938 All 314.

that law—the reason apparently being that according to that law human ownership in such property ceases and it vests in the Almighty. This feature of 'wakf' or dedicated property is not peculiar to Mahomedan Law and the position as regards dedicated property is

AGRA PRE-EMPTION ACT (1922), S 4

—S 4 (1)—*Mahomedan waqf—Right of pre-emption, if can be claimed by*

Where a waqf represented by the mutwalli sued for pre-emption, on a contention that the suit is not maintainable as the plaintiff is not a person contemplated by S. 4 (1) of the Pre-emption Act

Held, that for purposes of procedure, in the case of waqf the mutwalli represents the waqf property and estate under O 31, C P Code, there is no defect or difficulty in the conception of God Almighty as a juristic person in the case of a Mahomedan waqf.

Held, further, that the plaintiff had a perfect right of pre-emption and that no disability whatever, attaches to the juristic rights in the case of a waqf (*Bennet and Jamsil, JJ*) *WAKF BANAM KHUDAWAND KARIM v. RAJ KALI* I L R 1938 All. 206 =

10 B.A. 553 = 1938 A.L.R. 255 =

174 I.C. 241 = 1937 A.L.J. 1337 =

1938 A.W.R. (H.C.) 15 = A.I.R. 1938 All. 157.

—S. 4 (1) and (7)—*Petty proprietor—Who is—If a co-sharer.*

Where by a deed of exchange a person acquires only a particular number, that is a particular field in a petty proprietary pre-emption Act, in the Mahal.

L.v. SHEO PRASAD

—11 B.A. 93 =

176 I.C. 386 = 1938 A.L.R. 610 =

1938 A.W.R. (H.C.) 348 = 1938 A.L.J. 534 =

A.I.R. 1938 All. 382

—Ss 5 and 3—*Agreement conferring right of pre-emption not embodied in wazib-ul-ars—Such right, if enforceable.*

A right of pre-emption given by an agreement amongst the co-sharers of a village, but which is not

—S 6—*Sale under S. 5 of U. P. Regulation of Sales Act—Nature of—If gives rise to right of pre-emption.*

A sale by the collector of zamindari property under the provisions of S 5 of the U. P. Regulation of Sales

—S. 12, Classes II and 4—*Determination of class of pre-emptors—Rules governing*

manai whose component parts have not been divided and sub divided. The class of pre-emptors provided for by S 12 must be determined with reference to the constitution of the mahal on the date of the sale and not with reference to the constitution of the mahal on some earlier date. (*Iqbal Ahmad, J.*) *PRAN SINGH v. MANGAL SINGH.* 174 I.C. 914 = 10 B.A. 638 =

AGRA TENANCY ACT (1901), S. 10

1938 A.L.R. 347 = 1938 A.L.J. 156 =

1938 A.W.R. (H.C.) 133 = A.I.R. 1938 All. 208.

—S. 12 (1) (v)—*Co-sharers in the village—If includes owner of a share in the mahal.*

The intention of the legislature in enacting the words 'co-sharers in the village', in S. 12 (1) (v) of the Agra Pre-emption Act was that the owner of a share in a mahal or the sole proprietor of a mahal should have a right of pre-emption in a different mahal in the same village. Hence an owner of a half share in a mahal can claim to pre-empt property which is in another mahal in the same village (*Bennet and Verma, JJ*)

DIN DAYAL v. SHEO PRASAD.

I L R. 1938 All. 623 = 176 I.C. 386 =

11 B.A. 93 = 1938 A.L.R. 610 =

1938 A.W.R. (H.C.) 348 = 1938 A.L.J. 534 =

A.I.R. 1938 All. 382.

AGRA TENANCY ACT (III OF 1926).

Abandonment, S 107.

Abatement, S 44.

Agricultural holding, S 273 (1).

Appeal, Ss 271, 273.

Compromise, S 123.

Co-sharer, Ss 17 (1) (d), 221, 222, 228.

Co-sharing, S 24.

Co-tenancy, Ss 26, 44.

Declaratory suit, S 121.

Ejectment, Ss 20 (2), 44, 79, 80, 82, 241, 251, 253.

Ex proprietary rights, Ss 4 (d), 14 and 197.

Grant of occupancy rights, S 89.

Grove land, S 3 (15)

Illegal sub-letting, Ss 82 and 83.

Interpretation.

Joint patti, S 265

Sir Holders, S 99.

Sir land, Ss 4 (d), 5, 14, 21 and 226.

Statutory tenant, Ss 19, 41 and 132

Succession to tenancy, S 111

Suit for arrears of rent, Ss 132, 197.

Thekadar, S 199.

Under-proprietary holding, S 224.

Occupancy rights, Acquisition of. See (ACT II OF 1901), Ss. 13 (D), 14, AND Ss. 16 AND 17 (ACT III OF 1926)

—(II OF 1901) AND (III OF 1926)—*Fixed rate*

over—Orchards

change in the law

—Compensation.

1 an orchard of

grove prior to

new Tenancy Act, and the fixed rate tenant sued the sub-tenant for ejectment, it was held that the plots do

(*Darling, S.M. and Bomford, J.M.*) *MAHESH SINGH v. MT MOOLA.*

1938 B.D. 656 = 1938 A.W.R. (B.E.) 239 =

1938 A.L.J. (Supp.) 86.

—Ss 13 and 14—*Occupancy right—Acquisition of—Proof of continuous possession—Shifting of*

AGRA TENANCY ACT (1926), S. 19.

tion for correction of khatauni—Maintainability—Proper remedy—Liability to ejectment.

Occupancy rights lapse in any plot of an occupancy holding which becomes a grove, the occupancy rights therein are superseded by grove rights, and when the grove disappears the grove-holder becomes a non-occupancy tenant in the plot, the former occupancy rights not reviving on the plot ceasing to be grove. Where, however, the former occupancy tenants manage to retain their occupancy rights in the plot, the transferor of the grove plot, a transferee

claim the same rights. Occasional and the transferee rights from the recorded occupancy tenants. All that the transferee can acquire are grove rights which are extinguished on the disappearance of the grove. Thereafter the transferee is either a subtenant or a trespasser who has never been admitted, or at best a non-occupancy tenant. He is not entitled to apply for correction of the khatauni to establish his claim to occupancy rights. His proper remedy is to bring a regular suit under ss. 121-123 if he is not content with the result. If he fails to establish his claim as tenant and is declared a trespasser under S. 21 of the Act, he is liable to be ejected. (Darling, S.M. and Bomford, J.M.)

ABDUL HUSAIN. 1938 R.D. 124.

—S. 19—Fallow land—Accrual of statutory rights.

A person who has taken a plot of land has never cultivated it cannot claim a mere misdescription of a tenant in a receipt for rent of statutory rights. (Bomford, J.M.)

—S. 19—Re-admission of proof.

When a tenant has been ejected it is for him to prove that he has been re-admitted. Merely acceptance of rent constitutes admission of tenancy, committed by the zamindar in occupancy tenant in a suit for possession as an act of re-admission. (Bomford, J.M.)

MANNA.

—S. 20 (2), Prov. (1) (b)—'Proceedings' meaning of.

'Proceedings' in S. 20 (2), proviso 1 (b) must be taken to mean effective proceedings. (Darling, S.M. and Bomford, J.M.)

KALKA PRASAD v. RAHUA. 1938 A.W.R. (B.R.) 167—1938 R.D. 551

—S. 23—Mortgage of occupancy holding—Suit for rent against tenant—Facts to be proved—Plea as to mortgagee's defective title—If unsustainable.

When a mortgagee of an occupancy holding sues his subtenant for rent, he has to prove the contract of tenancy. If such a contract existed or by a course of conduct the subtenant was paying rent to the mortgagee in possession, in that case, the fact that the mortgagee had derived his title void transfer would not be a defence against the plaintiff.

RAMU JAN KHAN. 1

24—Applicability

AGRA TENANCY ACT (1926), S. 24.

RENT ACT (XII OF 1881), S. 8 1938 R.D. 121 = 1938 A.W.R. (B.R.) 72.

—S. 24—Co-sharing.

It is necessary for co-sharing in cultivation, that there should be pooling of one's own cattle and the implements of cultivation. (Darling, S.M. and Bomford, J.M.)

REOTI PRASAD v. MANGALI 1937 R.D. 443 = 1937 A.W.R. 1028.

—S. 24—"Co sharing"—Meaning of—Proof.

he claims to have co shared the mere fact that he may have helped the latter over the holding would not amount to co sharing (Darling, S.M. and Bomford, J.M.)

PEAREY LAL v. KUNJAL 1937 A.W.R. 869 = 1937 R.D. 397.

—S. 24—Co-sharing—What constitutes.

Merely management does not imply co-sharing; there must be some pooling of resources.

1938 A.W.R. (B.R.) 165.

—S. 24—Co sharing—What constitutes—Minority.

1938 A.W.R. (B.R.) 165.

—S. 24—Co sharing—What constitutes—Minority.

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1938 A.W.R. (B.R.) 165.

AGRA TENANCY ACT (1901). § 13.

1938 A L R 347-1938 A L J. 156-
1938 A W R. (H C) 133-AIR 1938 All. 208

—S 12 (1) (v)—'Co shavers in the village'—If includes owner of a share in the mal.

The intention of the legislature in enacting the words 'co-sharers in the village', in S. 12 (1) (v) of the Agra Pre-emption Act was that the owner of a share in a mahal or the sole proprietor of a mahal should have a right of pre-emption in a different mahal in the same village. Hence an owner of a half share in a mahal can claim to pre-empt property which is in another mahal in the same village. (Bennet and Verma, J.J.)

DIN DAYAL ■ SHEO PRASAD

AGRA TENANCY ACT (III OF 1926).

Abandonment, S 107.

Abandonment, *See* 107.
Abatement, *See* 44.
Agricultural holding, *See* 273 (1).
Appeal, *See* 271 273
Compromise, *See* 123.
Co-sharer, *See* 17 (1) (d), 221, 222, 226.
Co sharing, *See* 21.
Co tenancy, *See* 26 44
Declaratory suit, *See* 121.
Ejectment, *See* 20 (2), 44, 79, 80, 82, 241, 251, 253.

CONFIDENTIAL - SECURITY INFORMATION

Joint patti, S. 265
Jurisdiction of Revenue Courts, S. 271.

Jurisdiction of Revenue Courts, S. 271.
Khodkasht, Ss 5, 44, 226.
Khodkasht, Ss 226, 255.

Lambardar, Rs. 226, 200,
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Sir Holders, S. 99.

Sir land, Ss. 4 (d), 5, 14, 21 and 226.
Statutory tenant, Ss 19, 41 and 192

Succession to tenancy, *S.* 24.
Suit for arrears of rent, *Ss.* 132-137.
Theft, *S.* 122.

Occupancy rights, Acquisition of. *See*

II OF 1901), SS. 13 (D), 14, AND SS. 16 AND
(ACT III OF 1926).

—(II OF 1901) AND (III OF 1926)—Fixed
avaar—Orchard

-Compensati

Tenancy Act, and the fixed rate tenant spend

1. The first step is to identify the problem or goal. This involves understanding the current situation and what needs to be achieved.

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.. of Act of 195
MAHESH SINGH

1938 A.Y. J. 10

—Es. 13 and 14—Occupancy.
Proof of continuous:

Ergebnisse: In 1990 waren 10,3 % der Bevölkerung in der Bundesrepublik Deutschland in der Altersgruppe der 65-Jährigen und älteren zu finden. Im Jahr 2000 wird sich dieser Anteil auf 14,7 % erhöhen. Die Zahl der 65-Jährigen und älteren wird von 10,3 Millionen im Jahr 1990 auf 14,7 Millionen im Jahr 2000 ansteigen. Die Zahl der 65-Jährigen und älteren wird von 10,3 Millionen im Jahr 1990 auf 14,7 Millionen im Jahr 2000 ansteigen.

AGRA TENANCY ACT (1901), S. 58.

In a suit to eject the defendant as heir of a statutory tenant, proof of continuous possession from 1319 F. on ward throws on the plaintiff the burden of proving in his turn that the tenure before 1323 F. could not be reckoned towards the acquisition of occupancy rights.

1938 A.L.J. (Supp.) 65.

—S 58—*Suit under—Compromise admitting contesting defendant to occupancy holding—Effect on subsequent suit for division of holding by member of another branch.*

Where on the death of the holder of an occupancy holding, the zamindar filed a suit under S. 58 of the Old Tenancy Act against all his presumptive heirs, but it was contested only by a member of one branch and was eventually compromised by him by which he was admitted to the occupancy holding and where later on the members of another branch of the original holder sued for partition of the holding it was held that in view of the decision in the prior suit, it was for the plaintiffs in the later suit to prove possession, if they wished to prove their co tenancy. (*Darling, S.M. and Bomford, J.M.*) RAM SUMER MISRA v. RAM NIRANJAN MISRA.

1938 A.W.R. (B.R.) 209=1938 E.D. 670.

—(III OF 1926)—*Applicability—Widow succeeding to husband under Act of 1881 and dying after 1926—Succession to—Law applicable.*

The law of succession to be followed in the case of a tenancy is the law as it stands on the date when the succession opens. In the case of widow tenant who succeeds under Act XII of 1881, but who dies after the enactment of Act III of 1926, it is the latter Act that governs succession to the widow. (*Darling, S.M. and Bomford, J.M.*) RAMDAYAL v. BINDESHWARI PRASAD. 1938 R.D. 121=1938 A.W.R. 72 (B.R.).

—*Interpretation—Reference to former Act—Permissibility.*

Per *Iqbal Ahmad, J.*—Agra Tenancy Act of 1926 is a consolidating and amending Act as is apparent from its Preamble. In order to appreciate the full significance and import of an amendment introduced by the Act reference must of necessity be made to the provisions of the former Act. (*Bennett, Ahmad, Collier, Bajpai and Gangi*) DULAR PANDEY v. NANDA BUDHAL.

I.L.R. (1938) All. 663=11 E.A. 61=

1938 A.L.R. 578=1938 A.L.J. 585=

1938 A.W.R. (H.C.) 385=176 I.C. 226=

1938 R.D. 628=A.I.R. 1938 All. 396 (F.B.).

—*Suits under—Technicalities—Reliance upon—Principle as to.*

It is a sound principle that technicalities should not be pressed too far in suits under Tenancy Act. (*Darling, S.M. and Bomford, J.M.*) TIKOI CHAND. 1938 R.D. 1=1938 A.W. :

—Ss 3 and 242—*Order under S.*—*If a decree under Tenancy Act—Appeal*

An order under S. 144 C.P. Code.

suits and decrees in suits. So an appeal does not lie to the District Judge under S. 242 from an order under S. 144 C.P. Code.

AGRA TENANCY ACT (1926), S. 4.

—S. 3 (7)—“Sub-tenant”—*Grantee of muafi khidmatu—Person holding under—Status of—Ss. 187 and 188.*

It cannot be held that there can be no sub tenant of a rent free grantee holding a *muafi khidmatu*. A service grant is liable to have rent fixed under S. 187 of the Agra Tenancy Act, though it may also be resumed under S. 188. A person holding from such a grantee is a sub-tenant as defined by S. 3 (7) of the Act. (*Darling, S.M. and Bomford, J.M.*) RADRI TEWARI v. BECHAI CHAMAR. 1938 M.D. 160=

1938 A.W.R. (B.R.) 91.

—S. 3 (14)—*Decree—Meaning of—If includes determination of any question under S. 47, C. P. Code. See AGRA TENANCY ACT, Ss. 249 AND 3, CL. (14).*

1938 A.L.J. 63.

—S. 3 (15)—*Grove—Area of 7 biswas containing 10 full grown mango trees—If grove.*

Where in a small area of 7 biswas there are 10 full grown mango trees, the plot is certainly a grove, however those trees are arranged. The fact that some casual cultivation is possible does not matter, when the trees preclude any considerable portion of the land being used primarily for any other purpose. (*Darling, S.M. and Bomford, J.M.*) SARDHA DIN v. MASURIADIN. 1938 R.D. 147=1938 A.W.R. (B.R.) 80.

—S. 3 (15)—*Grove land—Plots occupied by guavas and plum trees.*

Plum trees though not specifically mentioned in the explanation to the definition, are similar to guavas and peaches. Hence plots occupied by guavas and plum trees are not grove land within the definition of the Act. (*Darling, S.M.*) MASIT ULLAH v. SARDAR SINGH.

1938 A.W.R. (B.R.) 237 (1)=1938 E.D. 659=

1938 A.L.J. (Supp.) 81.

—S. 4 (d)—*Land if ‘sir’—Test.*

Unless a plot of land is recorded as *khudhaski* in 1333 F. it cannot become ‘sir’ under S. 4 (d) of the Agra Tenancy Act. (*Darling, S.M. and Bomford, J.M.*) SARE

—S. 4 (d)—*Mortgage by co sharer—Mortgagee and acquiring sir rights—*

Prior mortgage paid—Can claim to be recorded by the prior mortgagee—

His remedy.

Where one of the two co-sharers executes a mortgage in favour of the other with full rights to admit and eject tenants and such mortgagee by taking land into *khudhaski* acquires sir rights in such land under S. 4 (d) of the Agra Tenancy Act, a subsequent mortgagee from the same mortgagor who pays off the prior mortgagee, cannot claim to be recorded as prior mortgagee.

—Ss. 4 (d) and 14 (2)—*Construction—‘Culti-*

reference to S. 4 (d) or 14 (2) of the word ‘cultivated’ does not ‘ploughed’ and provided that no

—Ss. 18 and 121-123—Applicability—Occupancy

AGRA TENANCY ACT (1926), S. 19

tion for correction of khatauni—Maintainability—Proper remedy—Liability to ejectment.

Occupancy rights lapse in any plot of an occupancy holding which becomes a grove, the occupancies therein are superseded by grove rights, and grove disappears the grove-holder becomes a pancy tenant in the plot, the former occupancy reviving on the plot ceasing to be grove. Whenever, the former occupancy tenants manage to retain their occupancy rights in spite of the disappearance of the grove plot, a transferee from them is not entitled to claim the same rights. Occupancy rights are not transferable and the transferee does not acquire any such rights from the recorded occupancy tenants. All that the transferee can acquire are grove rights which are extinguished on the disappearance of the grove. Thereafter the transferee is either a subtenant or a trespasser who has never been admitted, or at best a non occupancy tenant. He is not entitled to apply for correction of the khatauni to establish his claim to occupancy rights. His proper remedy is to bring a regular suit if he is a tenant or a trespasser. If he fails to do so, he is not entitled to sue under S. 19 with by the ABID H.

S. 19—Fallow land—Accrual of statutory rights

A person who has taken a lease has never cultivated it cannot become a mere misdescription of such tenant in a receipt for rent does of statutory rights (*Bomford, J.M.*)
NARAIN RAO PATNIS

S. 19—Re-admission of tenant of proof

When a tenant has been ejected, it is for prove that he has been re-admitted. If he retain sion, the mere acceptance of rent from him constitute admission of tenancy, nor can a committed by the zamindar in misdescribing him as an occupancy tenant in a suit for arrears of rent be construed as an act of re-admission (*Darling, S.M. and Bomford, J.M.*) MOHAMMAD ASGHAR v. MANNA
1937 R.D. 378.

S. 20 (2), Prov. (1) (b)—'Proceedings' meaning of.

'Proceeding to mean an action' (*Bomford, J.M.*)

S. 23—Facts to be proved—Plea as to mortgagee's defective title—If sustainable.

When a mortgagee of an occupancy holding sues his sub-tenant for rent, he has to prove the contract of tenancy. If such a contract existed or by a course of conduct the sub tenant was paying rent to the mortgagee in possession, in that case, the fact that the mortgagee had derived his title under a voidable or even void transfer would not be a defence against the plaintiff.
RAM v. JAN KHAN.

S. 24—Applicability and scope—Tenant under

AGRA TENANCY ACT (1926), S. 24.

RENT ACT (XII OF 1881), S. 8. 1938 S.D. 121 = 1938 A.W.R. (B.E.) 72.

S. 24—Co-sharing

Co-sharing is a term which is not defined in the Act.

S. 24—"Co-sharing"—Meaning of—Proof.

Co-sharing involves a pooling of cattle and the implements of husbandry, and in the absence of evidence that the claimant had pooled his cattle and implements of husbandry along with those of the person with whom he claims to have co shared the mere fact that he may have helped the latter over the holding would not amount to co sharing. (*Darling, S.M. and Bomford, J.M.*) PEARAY LAL v. KUNJAL
1937 A.W.R. 869 = 1937 R.D. 397.

S. 24—Co-sharing—What constitutes.

Mere management does not imply co-sharing; there must be a pooling of cattle and implements of husbandry.

S. 24—Co sharing—What constitutes—Minority

father, however much they helped in the agricultural work, does not constitute co-sharing.

Right of succession.

Quere.—Whether the separated sons of an occupancy tenant have a right to share in their father's inheritance. (*Darling, S.M. and Bomford, J.M.*) SUKHDEO v. KRISHNA LAL,
1938 R.D. 177 = 1938 A.W.R. (B.E.) 110

S. 24—Sharing in cultivation—Proof—Holding of death of tenant and for a long

claim to have shared in the cultivation comprising the holding were so long as the holding was in the hands of the tenant.

S. 24—Succession—Daughter's son not sharing in cultivation—Right of.

A daughter's son has no right to succeed to the occupancy holding of his grandfather unless he has co-

reference to separated

others who are entitled to share in the holding are joint with him.

AGRA TENANCY ACT (1926), S. 24

are entitled to the share of the deceased brother to the exclusion of the divided brothers. In the absence of definite and strong evidence of such intention the brothers would be entitled. The fact that the brothers are sons of a different mother is not conclusive of the fact of separation. (Borford, J.M.) MANS TEWARI

—S. 24—Succession right to succeed a tenant.

A chela has no right of occupancy rights of a mahajan in connection with the estate. NANDAN GIRI v. BAWAN.

—S. 24—Succession of daughter.

It is clear that a daughter cannot succeed to the occupancy rights of her father. (Darling, S.M. and Bomford, J.M.) CHANDRIKA DUBE v. BANSDEO MISRA.

—Uncle and uncle's son—Rights of.

On the death of a tenant of an undivided holding, his uncle takes the whole of his share as against his another uncle's son. (Darling, S.M. and Bomford, J.M.) CHANDRIKA DUBE v. BANSDEO MISRA.

1937 E.D. 454.

AGRA TENANCY ACT (1926), S. 25

Per Bennett, Ag. C. J.—Where an occupancy tenant

nearest surviving heir of the last male tenant in accordance with the provisions of the Act.

mean "in the case of a male tenant's death" and the words do not imply that the male tenant should die. apply who has therefore

collaterals who shared in the cultivation are entitled to succeed, and the widow comes in under S. 25(1) as a "widow of class 2 in S. 24."

Per Iqbal Ahmad J., concurring on different grounds.—S. 6, U. P. General Clauses Act, cannot be

brother

at of his

If

wi sp ba be

—S. 25—Widow tenant—Re-marriage—Re-admission

ment, when the (Darling, S.M.) ZAHID ALI.

—S. 25—H

—Ejectment—Limitation.

Where a widow of an occupancy tenant re-married in

a male tenant.

Per Basappa, J., dissenting.—The succession to the estate would be that of a male tenant. (Ag. C.J., Nath. J.J.)

1 B.A. 61 =
L.J. 585 =
6 I.C. 226 =
386 (F.B.).

came into force—Devolution of tenancy.

Y. D. 1938—2

—Widow succeeding to husband as co-tenant under Act of 1

AGRA TENANCY ACT (1926), S. 26.

Death of after 1926—Succession—Daughter's son not co sharing with grandfather—Rights of.

The son of the daughter of a widow who succeeded

Act of 1901, would not make s. 25 (2) applicable. (*Bomford, J.M.*) MAHADEO MALLAH v. RUM DAS MALLAH. 1938 E.D. 123—1938 A.W.R. 84 (B.R.).

—S. 26—*Inheritance—Competition between separated brother and nephew*

Under the tenancy law as amended by S. 26 of the

—S. 26 (4)—*Unregistered lease—Possession in*

—S. 29 (6)—*Benefit*

If entitled to.

A tenant who was not a blood

MUKARRAM ALI KHAN v. PURAN.

1938 E.D. 421—1938 A.W.R. (B.R.) 179—1938 A.L.J. (Supp.) 29.

—Ss. 32 and 99—*Tenant filing surrender but not paying process fee and resulting from some—Effect—Landlord ejecting sub-tenant—Right of tenant under S. 99, for illegal ejection.*

Under S. 32 of the Agra Tenancy Act to constitute surrender which would extinguish the interest of tenant, there must be cessation of cultivation. A mere notice of surrender does not constitute surrender. A tenant who files a surrender but who never pays the necessary process fee and evinces from his wish to

on the alleged surrender, that amount of the tenant giving the latter

limited to the lifetime of the tenant or for 10 years whichever is shorter. The section cannot be read as covering the lifetime of the successors of the original mortgaging tenant. The fact that a person holds under a valid mortgage is not by itself a ground on which he can claim the benefit of S. 32 (2) (*Darling, S.M. and*

AGRA TENANCY ACT (1926), S. 37.

Bomford, J.M.) BALGOVIND v. SATNARAIN LAL.

1938 E.D. 174—1938 A.L.J. (Supp.) 2—

1938 A.W.R. (B.R.) 93.

cession—Widow tenant

—Sub letting of entire

other village—Right of

rights in a holding in her own right leaves the village and returns to another village after sub letting her whole holding, her daughter's son who does not even allege co-sharing with his grandfather cannot succeed to the widow on her death and is not entitled to be recorded as occupancy tenant in succession to the widow. (*Darling, S.M. and Bomford, J.M.*) RAM DAYAL v. BINDESH. 1938 E.D. 121—

1938 A.W.R. 72 (B.R.).

d scope—Partition of

of Civil Court—If

ling that S. 37 of the

lands held under one

grant. The section is

It is only in the cases

of a case in which a tenant has been recorded as occupancy

1937 O.C. 648—10 E.A. 405—1937 A.W.R. 649—1937 A.L.J. 794

cession by recorded tenant for partition under S. 37—Possibility of opposition from landlord—Suit under S. 121, if necessary.

A tenant who has been recorded as a co-tenant in proceedings under S. 42 of the Tenancy Act, is entitled to sue under S. 37 for partition of his share. The

—Ss. 37 and 121—*Cotenant seeking possession against tenants in possession—Proper remedy*

A co tenant who is out of possession and desires

the Tenallenged laratory (*Darling, S.M. and Bomford, J.M.*) DHARI D 584. *tantious of one of the proce-der of*

landlord and the landlord and the former suit is decreed and the latter dismissed, if appeals are filed in both suits, the appellate Court should refrain from passing any final order in one of them, when he remands the other suit to the lower court for further inquiry, when the same questions are exactly in issue in each case. To allow the appeal in one and to remand the

AGEA TENANCY ACT (1926), S. 37.

other is not the correct or proper procedure. (*Darling, S.M. and Bomford, J.M.*) RENUKA RAI v. SHYAM DUTT RAI. 1938 E D 133—
1938 A.W.R. 81 (B.R.).

—Ss. 37 and 92—Recorded co-tenant—Right to apply for partition under S. 37—Zamindars supporting defendants—It affects plaintiff's right.

A suit by a recorded co-tenant under S. 37 of the Tenancy Act, cannot be met by the plea that the suit ought to be under S. 99 as the zamindars are supporting the defendants, for the possession of one co-tenant is the possession of all co-tenants and as the defendants have not been ousted, it cannot also be said that the plaintiff has been ousted. (*Bomford, J.*) GANISH. 1938 E.D. 292-1

—S. 37—Right to apply for Dismissal of a prior suit *vis à vis*

Under S. 37 of the Agra Tenancy Act one or more co-tenants of a holding can apply for division thereof. The fact that a prior suit for division of the holding was in fact compromised, but the suit was dismissed *vis à vis* cannot deprive a plaintiff of his right under the Act. (*Darling, S.M.*) NAIN SUKH v. SUKHI

1938 A.W.R. (B.R.) 351-1938 E.D. 849.

—S. 37—Transfer contrary to—Suit for ejectment—Forum

When a part of the land on which the tenant is holding is

particular cases. Hence the suit for ejectment under S. 82 or for injunction under S. 85 (3) would lie in the Revenue Court. (*Bennet and Verma, JJ.*) KASHI KAMAR v. ASHARFI SINGH. 1938 A.L.J. 720—
I.L.R. 1938 A. 754-177 I.L.R. 450-11 E.A. 199—
1938 A.L.R. 747-1938 A.W.R. (H.C.) 622—
1938 E.D. 714-A.I.R. 1938 All 611.

—S. 40—Application under—Duty of Collector—Local inspection—Necessity.

When an application under S. 40 of the Act is made for the acquisition of certain land, it is treated by the Collector as judicial proceeding. Inspection by the Collector is absolute. (*Darling, S.M. and Marsh, J.M.*) PRASAD v. MANSAB 1938 A.W.

—Ss. 40 and 41—Application under—Summary dismissal on applicant's failure to appear in person—Propriety.

Where an application under Ss. 40 and 41 of the Agra Tenancy Act for the acquisition of certain occupancy and statutory holding is summarily dismissed by the Collector on the ground that the applicant has failed to appear in person, though he is represented by his own general attorney and by a Court Munkhtar, the sum-

rents before the date on which they fall due. (*Darling, S.M. and Bomford, J.M.*) RAM CHANDRA v. RAGHUNATH SINGH 1938 E.D. 175-1938 A.W.R. 42 (B.R.)

—S. 44—Applicability—Co-widows—Remarriage of one—Death of other co-widow—Suit by zamindar

AGEA TENANCY ACT (1926), S. 44.

against remarried widow for ejectment—Maintainability.

Where one of two co-widows left by a deceased tenant re-marries, the occupancy tenancy continues to subsist so long as the other co-widow who has not remarried is alive, notwithstanding the remarriage of one of them. On the death of the co-widow who has not remarried, the zamindar is entitled to assert his rights by treating the re-married widow as a trespasser on the ground of her re-marriage which comes to his notice. (*Darling, S.M.*) BUNDI BEGAM v. MUSTAFA HUSAIN KHAN. 1937 A.W.R. 871-1937 E.D. 413.

—S. 44—Applicability—Joint holding—One tenant

Act, the other tenants are no longer the co-tenants of that tenant. If these other tenants, do not allow the tenant getting his share divided to take physical possession of his share, but flout the orders of the revenue Court by keeping him out of possession, they are trespassers pure and simple and can be ejected as such. (*Bomford, J.M.*) CHITTAR v. JHUNVA 1938 E.D. 110-1938 A.W.R. 50 (B.R.).

—Ss. 44 and 82—Applicability—Land validly let

where a person has taken possession of the landholder's land without his consent and in contravention of the provisions of the Act. It is only then that the landholder can treat the occupier as a mere trespasser and sue him in a Revenue Court for ejectment. Where, however, the land had been validly let to a tenant who was in lawful possession thereof, and the latter has transferred it to another person, S. 44 cannot apply. To

1937 A.L.J. 1204-A.I.R. 1937 All 790.

—Ss. 44 and 86—Applicability—No exproprietary rights claimed on mortgage of *sur*—Suit to effect non-occupancy tenant *in sur*—Section applicable.

Where no exproprietary rights are claimed on the mortgage of *sur* land, the non-occupancy tenant *in sur* continues to be non-occupancy tenant and a suit to eject him should be brought under S. 86 and not S. 44. (*Darling, S.M. and Bomford, J.M.*) PRASAD PANDE v. LALTA 1938 A.W.R. (B.R.) 244.

107 (2)—Applicability—Occupancy permitting his sons to divide it

divide the holding between themselves and received the rent from them and continued to be responsible to the landlord, and where after several years he served a notice to quit on one of the sons and on his refusal to leave filed a suit under S. 44 of the Agra Tenancy Act.

AGRA TENANCY ACT (1926), S. 44.

Held, that the case was covered by S. 44, for the son was obviously retaining possession without the consent of the immediate landholder and against the provisions of the statute.

Held further, that S. 107 (2) might only apply if the whole holding had been left in the charge of the son concerned charge, and *B. PRASA*

—*Plea of surrender and new admission by zamindar—Zamindar's support, if converts suit into one under S. 99—Effect on limitation—Procedure to be followed*

Where a suit is filed under S. 44 of the Tenancy Act and the defendant pleads that there was a surrender by plaintiff and that he got the lands from the zamindar, then if such plea is supported by the zamindars, the suit becomes one under S. 99 and ought to be changed accordingly and fresh issue framed as to limitation. In such a case where the plaintiff became aware of the hostile attitude of the zamindars only suit under S. 44, the suit as filed was time. (*Darling, S.M. and Bomford, J.M.*) *PRASAD v. BINDRABAN.* 1938 A.W.

—*Ss 44 and 45—Applicability—on possession in spite of ejectment for over 12 years—In effect—Suit by landlord under S. 44 if less—Proper remedy*

The defendants who were formally ejected in 1923 managed to hold on to the plots and to retain possession for more than 12 years, there was no any regular re-admission to the tenancy of the defendants continued in the *khataun* the ejectment, and there was a settlement the year. In a suit by the zamindar for ejectment under S. 44 of the Agra Tenancy Act.

Held, that it was impossible to believe that the plaintiff-zamindar had no knowledge of the settlement, that the defendants had acquired rights and that they were therefore proper ejectment.

Held further, that it was open to the plaintiff to bring a suit under S. 45 of the Act for the recovery of rent. (*J.M.*)

—*S.*

In a suit under S. 44 of the Agra Tenancy Act, it is

of.

The mere execution of a deed of sale of an occupancy holding does not give rise to a cause of action to eject the vendee, it only arises on the actual transfer to the

AGRA TENANCY ACT (1926), S. 44.

—*Ss. 44 and 95—Ejectment—Plea of admission—Onus—Re-admission—Oral evidence—Admissibility—Ejected person re-entering into occupation—Position of.*

In a suit for ejectment if the defendant pleads that he has been admitted to tenancy under the provisions of the Act that such cases and oral evidence of a person who re-enters into possession without the written consent

of the landlord remains liable to ejectment for 12 years as a trespasser. He takes possession at his own risk. (*Darling, S.M. and Bomford, J.M.*) *BADRI NARAIN LAL v. SURJA RAM.* 1938 A.W.R. (B.E.) 206 = 1938 RD. 652.

—*S. 44—Ejectment—Suit by a co-sharer lambardar—Application by the other co-sharer to be made a party—Dismissal of suit, in spite of—Propriety.*

Where a suit for ejectment under S. 44 of the Tenancy Act is filed by one of the co-sharers lambardar and

—*S. 44—Lambardar—Power to eject co-sharer taking possession without his consent of abandoned holding.*

A lambardar can eject a co-sharer who without his consent takes possession of land vacated by a tenant, or

—*S. 44—Lease by co-sharer, pending partition proceedings—Leased plots falling to share of another co-*

such plots is only in the position of a trespasser and

—*S. 44—Liability to ejectment—Person not a trespasser without permission.*

about the owner of the trees such person plants without trespasser on the land and he under S. 44 of the Tenancy Act (*Bomford, J.M.*) *RAM BIJAI PRASAD SINGH.* = 1938 A.W.R. (B.E.) 247.

—*S. 44—Limitation—Allotment at a partition—If opens a fresh period.*

The allotment of a plot to the patti of a plaintiff at a recent partition, cannot have the effect opening out a

AGRA TENANCY ACT (1926), S. 44.

In a suit to eject as trespasser a widow tenant who has remarried the period of limitation runs from the date on which the ledge of the remarriage
J.M.) MT TETRA

—S. 44—*Limit*

Hindu widow with

reversioner—Starting point of limitation

In the case of a lease given by a Hindu widow holding a life interest, it is not open to a reversioner of her husband to attack the lease so long as the lessor-widow is alive; and the limitation of twelve years for a suit by the reversioner to eject the lessee under S 44 of the Agra

—S 44—*Limitation—Partition of six land—*

Holder of divided plot—Suit for ejectment of trespasser

—Defendant in possession as mortgagee—Limitation—

Starting point—Plaintiff's knowledge of mortgage right prior to confirmation of partition—Effect.

A suit to eject the defendants from a field which the

—S. 44—*Limitation—Starting point—Knowledge,*

possession of defendant—If means personal knowledge of zamindar.

In the case of large estates the knowledge of posses

mortgagor's sub-tenants—If liable to be ejected as

AGRA TENANCY ACT (1926), S. 44.

recorded as mortgagee—Surrender by tenant—Mortgagee, if can be ejected.

Where an occupancy tenant who leaves the village is

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by

age

, J.

1938 A L J. (Supp.) 112.

—Ss. 44, 56 and 92—*Prior suit under Ss. 44 and 92 against defendant as sub-tenant—Dismissal for default—Subsequent suit against same person under S. 44 as trespasser—If maintainable.*

Where an earlier suit under Ss 86 and 92 of the Agra Tenancy Act in which the defendant was sued as a sub-tenant, was dismissed for default, a subsequent suit under S 44 of the Act against the same defendant treating him as a trespasser after the tenant in chief had abandoned his

if a trespasser after the tenant in chief had abandoned his

—S. 44—*Procedure—Suit by holder of six plot allotted on partition—Defendant proved to be mortgagee of plot—Procedure—Remedy of defendant—Right of plaintiff to possession*

Where in a suit for ejectment under S. 44, by a person who gets six land on partition, the defendant

that he is a mortgagee of the plot that

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—S 44—*Purchaser of proprietary share—*

Demarcation of vendor's six land and fixing of separate

rent—Rights of vendee, on ejectment of ex proprietary

tenant.

—Ss 44 and 99—*Scope—Co-sharers—Ejectment*

.. .. .

—Ss 44 and 107—*Occupancy tenancy—Mortgage*

—Tenant not recorded as 'Mafzur' but mortgagee re

—S 44—*Scope of—Trespasser in possession—Re-*

medy of owner—Option as to

AGRA TENANCY ACT (1926), § 44.

It is open to the proprietor of agricultural land either to sue a trespasser for ejectment in the Civil Court or to avail himself of the speedier remedy provided by S. 44 of the new Tenancy Act and to file a suit for ejectment and for damages. *(Darling, S. M. and Mehta, J.M.)*
FULA K

—Ss. 44 and 99—*Suit to eject trespasser—No plea as to non joinder of recorded tenants-in-chief—Later objection—Procedure to be followed.*

Where in a suit to eject as a trespasser a person recorded as *quabir*, no plea was specifically taken as to the non-joinder of all the recorded tenants-in-chief but later on the objection is raised, it is unnecessary to make them parties. If the recorded tenants have any rights there is nothing to prevent asserting their rights under § 99, if a trespasser, the plaintiff either takes the own cultivation or puts in another tenant. *(Darling, S. M. and Bomford, J.M.)* SHEO NARAIN v. SHEO RATAN, 1938 A.L.J. (Supp.) 18=1938 R.D. 248

—S. 44—*Suit by recorded six holders for ejectment of defendants as trespassers—Joint mahal—Existence of other co-sharers—Existence of six rights—Materiality.*

The existence or otherwise of six rights is a very material question in a case where the plaintiffs sue as recorded six holders for the ejectment of the defendants under S. 44 of the Tenancy Act as trespassers. For if the land is *khalsa* the suit would be bad if it is only by some of the co-sharers. *(Darling, S. M. and Bomford, J.M.)* RAM KARAN SINGH v. RAM BARAN DUBE, 1938 R.D. 376=1938 A.W.R. (B.R.) 217=1938 A.L.J. (Supp.) 56.

—S. 44—*Suit under—Pleadings—Contents.*

When a landlord brings a suit under S. 44 of the Agra Tenancy Act he must be certain of the position that he has to take. His pleading must contain a clear statement that the area has been settled and that the person proceeded against is a trespasser. He cannot plead that some possession and a third person has trespass on the plot. In that case the trespass would be against the person who is in possession and such the suit would have to be dismissed. *(Darling, S. M. and Mehta, J.M.)* AMARJIT SINGH v. THACKAM, 1938 R.D. 836

—S. 44—*Suit under—What are proper issues.*

In a suit under S. 44 of the Tenancy Act, the proper

—S. 44—*Suit under, by a zamindar, one of several co-sharers—Maintainability—Refusal of others to join—Remedy.*

A suit under S. 44 of the Tenancy Act can only be brought by the landholder and the landholder in the entire coparcenary body. So one or more of the co-sharers only cannot bring a suit under S. 44. If a plaintiff cannot induce his co-sharers to join in the suit, then his remedy lies by way of partition under the Land

AGRA TENANCY ACT (1926), § 44.

Revenue Act. *(Darling, S. M. and Mehta, J.M.)*
PARBHOO v. CHATAR SEN.

1938 A.W.R. (B.R.) 321=1938 R.D. 789=1938 A.L.J. (Supp.) 110.

—Ss. 44 and 99—*Suit by tenant to eject trespasser—Limitation—Starting point.*

Where a tenant sues to eject a person as a trespasser, or such a suit begins to run only from the time the tenant is ousted from possession either by the zamindar or by a trespasser claiming under the zamindar. The mere giving of a receipt for rent to the trespasser by the zamindar after the filing of the suit could not amount to an overt act to oust the tenant from possession. *(Bomford, J.M.)* BHAGIRATH TEWARI v. ATIRAJI, 1938 A.L.J. (Supp.) 77=1938 R.D. 778.

—S. 44—*Tenant admitted by some only of the coparcenary body—If only a trespasser.*

Where a person has not been admitted to tenancy by

—S. 44—*Tenant ousted by some of landholders—Rights to sue them as trespassers.*

Where some of a body of landholders have ousted the tenant, in pursuance of some supposed right, the tenant has the right to sue them for ejectment under S. 44 as trespassers. *(Darling, S.M.)* DULAR SINGH v. GAJRAJ SINGH, 1937 R.D. 449.

—S. 44—*Tenant persisting in holding after formal ejectment—Zamindar's right to eject when estate is under attachment by Collector—U. P. Land Revenue Act, S. 151.*

If a tenant persists in holding on to the tenancy even after a formal ejectment in a proceeding under S. 79 of the Tenancy Act, the Zamindar is entitled to bring another suit for his ejectment as trespasser under S. 44 of the Act, although the Collector has attached his estate for default in paying the land revenue. *(Darling, S.M.)* PAHLAD SINGH v. SETH BANSIDHAR, 1937 R.D. 581.

—Ss. 44 and 205—*Theka—Collaterals of thekadar in possession—Expiry of theka—Liability of the*

have been put in of the theka they can be ejected as trespassers. *(Darling, S.M. and Mehta, J.M.)* MASUDA BIBI v. AZIMULLAH, 1938 R.D. 621=1938 A.W.R. (B.R.) 268=1938 A.L.J. (Supp.) 102.

—S. 44—*"Trespasser"—Mortgagee from tenant holding after termination of tenancy—Status of—Mortgagee over 60 years old—Effect of.*

A mortgagee from a tenant whose tenancy has expired is a trespasser and can be ejected as such. The fact that the mortgagee has been in possession for 60 years makes no difference. *(Darling, S.M.)* BALGOVIND v. ... 1938 R.D. 174=1938 A.W.R. (B.R.) 93.

—S. 44—*Mortgagee from tenant holding after termination of tenancy—Status of—Mortgagee over 60 years old—Effect of.*

Where while the old Tenancy Act of 1901 was in force a person executed a usufructuary mortgage of his *khudkasht* plot and simultaneously on the same day executed a deed of relinquishment of all expropriatory rights, the surrender of expropriatory rights was null

AGRA TENANCY ACT (1926), S. 44.

and void having been made before their accrual. If the mortgagor, in whose favour expropriatory rights might have accrued, lost cultivating possession of the plot, his sons who subsequently come to be recorded as holding *tila tafa* cannot revive these expropriatory rights and are liable to be ejected as trespassers. (*Darling, S. M. and Bomford, J. M.*) **BILASI SINGH v. RAM CHANDER SINGH.** 1937 R.D. 462.

has been held to mean the whole coparcenary body. So a suit by some only of the members is not maintainable. (*Darling, S. M. and Bomford, J. M.*) **MEWA RAM v. SUKHEY SINGH.** 1938 A.W.R. (B.R.) 137 = 1938 R.D. 267.

—S 45—Fixation of rent—Procedure—If can be done in a suit under S. 132. See *AGRA* SS, 132 AND 45, 1938 A.W.

—S. 47—Agreement to pay on compromise in ejectment suit—Absence Acted upon—Binding nature—Onus. Where an ejectment suit is dismissed promise under which the tenant agrees in return for the granting of occupancy rights, such a compromise though unregistered, will become binding on the parties, if it has been acted upon. Hence it is the duty of the zamindar who takes his cause of action on such a compromise, to prove that the agreement was in fact acted upon (*Darling S.M. and Bomford, J. M.*) **RANGAI CHAMAR v. JOGI SINGH** 1938 A.W.R. (B.R.) 153 = 1938 R.D. 303

—S 47—Scope—Rent suit—Compromise varying cash rent into *batali rent*—Rate of commutation not stated and exchange made in the court.

—S. 72—Covenant overriding provisions of—Validity.

It is not the intention of the Legislature covenant in a lease to override the provisions of the Tenancy Act. Hence any covenant remission of rent in the *kabulyat* is void. (*Nath, J.*) **MAHARAJAH OF BIKANER v. RAJ** 1938 A.W.R. (H.C.) 293 = 1938 R.D. 550 = 1938 A.L.J. 464.

—S 73—Remission in contravention of—Zamindar's remedy.

Where the remissions of rent are in violation of the provisions of S. 73 of the Agra Tenancy Act, the tenant is entitled to treat them as *ultra vires* and straight away to realise the rents by suits.

10 R.A. 588 = 1938 R.D. 274 = 1938 A.W.R. 126 (H.C.) = 1938 A.L.J. 288 = A.I.R. 1938 All 158

—Ss 73 and 74—Remission of rent under S. 73—Conditions to be observed—Non compliance with—Validity of remissions—Suit regarding—If barred by S. 74.

AGRA TENANCY ACT (1926), S. 80.

According to S. 73 of the Agra Tenancy Act, the remission or suspension of revenue is to precede the suspension or remission of rent and further the proportion of the rent remitted or suspended must not be in excess of the proportion of the revenue remitted or suspended. Where these two requisites are not complied with the remission is not one under S. 73, though it might purport to be one under S. 73 of the Act. S. 74 of the Act

suit in respect of such a *at Ahmad, J.J.*) **ABDUL**

F STATE 38 All 114 = 174 I.O. 505 = R.A. 588 = 1938 R.D. 274 =

1938 A.W.R. 126 (H.C.) = 1938 A.L.J. 288 = A.I.R. 1938 All 158.

—S 74—Bar of suit under—Remission contravening provisions of S. 73. See *AGRA* TENANCY ACT, SS, 73 AND 74 1938 A.W.R. 126 (H.C.).

—S 78(1)—Claim for compensation made after

not put ed at a ed will made chancy PHUL 1938 A.W.R. 380 (2).

—S 79—Decree against ex proprietary tenant for arrears of rent—Ejectment in execution—Extinguishment of all ex proprietary rights.

Where in pursuance of a decree for rent against an ex-proprietary tenant, an order in ejectment is passed in execution, all the ex proprietary rights of the tenant are

(2) and (5). An order for ejectment in respect of an unsatisfied *Arrears of rent* must be paid before the

v QAMAR UL-HASSAN KHAN 1938 R.D. 787.

—S 80—Decree for arrears of rent—Judgment-debtor paying small portion of amount within the period of grace and asking for further grace—Discretion of Court—Interference

for a further extension Board will not interfere. **SURJA v. PANNA** 1937 R.D. 374.

—S. 80—Ejectment—Payment of decree amount alone—Costs of ejectment, not paid—Liability to ejectment

A tenant is not liable to ejectment if he pays the decree amount alone without the costs of the ejectment proceedings. (*Bomford, J. M.*) **NEWAL DUBE v. BHOLANATH** 1938 R.D. 395 (2) 1938 A.W.R. (B.R.)

AGRA TENANCY ACT (1926), S. 80

—S. 80—*Extension of time—Scope of—Tenant, if*
Order for judgment on

lay
 be

1938 A.W.R. (B.R.) 152=1

—S. 80—*Judgment-debtor failing to*
day allowed for payment—Order of eject
Court to pass.

If judgment-debtors fail to appear on the last day

—S. 80—*Notice under—Some of the co tenants con-*
testing—Presumption of knowledge as regards others.
 When some of the co-tenants have appeared and

1938 A.W.R. (B.R.) 279.

—S. 80—*Order of ejectment passed on judgment*
debtor failing to appear on day fixed for payment—
Judgment debtor applying to set aside order on next
day alleging illness—Order setting aside ejectment order
—Revision.

Where a judgment-debtor against whom a decree for
 arrears of rent was passed failed to appear on the last
 day fixed for payment and an order of ejectment was
 passed and on the very next day he applied for that

AGRA TENANCY ACT (1926), S. 82.

J.M.) SHEO PRASAD GUPTA v. MANDIL SINGH.

1938 R.D. 541=

1938 A.W.R. (B.R.) 235.

—S. 81—*Services of notice under—Extensions of*
time—Default in payment—Order of ejectment—Revers.
 When on service of a notice under S. 81 of the Ten-
 and obtains extensions of
 payment of the arrears, but
 the expiry of the extended
 it is passed, his application
 ler of ejectment should not
 M and Bomford, J.M)

lord—Suit to eject under S. 44—Maintainability. See
 AGRA TENANCY ACT, SS 44 AND 82.

1937 A.W.R. 888.

—*rigage by one of several*
 —*Effect of.*

Act is not inapplicable
 executed by one of

To hold that the sec-
 ase would result in a

number of co tenants whittling away the tenancy by
 small mortgages with which the zamindar would be
 helpless to interfere. The co tenants must assert them-
 self as tenant ex-

—S. 82—*Decision in suit for arrears of rent inter*
partes under the Agra Tenancy Act of 1901 holding that
defendant was a proprietor and not tenant does not
operate as Res judicata in a subsequent suit for eject-
ment under S. 82 of Act III of 1936.

1937 A.W.R. 1215=1937 A.L.J. 1339.

—S. 82—*Illegal sub letting—Co tenants not object-*
ing to each other's sub-letting—Effect—Liability to

DAMRU LAL.

1938 A.W.R. (B.R.) 149=1938 R.D. 290.

—Ss 82 and 83—*Illegal sub-letting—Ejectment—*
Discretion.

Where there has been illegal sub-letting in favour of
 the members of the family, which is a typical agricul-
 exercise
 eject the
 Darling,
 v. RAM
 R.) 325=

1938 R.D. 674.

82 and 83—*Mortgage of occupancy holding*
 —*Zamindar not taking action to eject mort-*
subsequent sub letting of holding by mortgagee to
 and others—Zamindar's right to sue for

—S. 80 (2)—*Order under—Time for*
out, if any.

AGRA TENANCY ACT (1926), S. 82.

Where an Act of mortgagee su-
gagor and o-
jectment of
lency show
the Act. (PHEKU CH)

—S. 82
to suit under
Where it i

AGRA TENANCY ACT (1926), S. 86.

in the Ma-
the plots as his
dants appeared in
1 F as cultivating
re was a marginal
under the order of
of the occupancy
adure under S 107

—S 86—Applicability—Tenant of Zamindar's
grove—Ejectment—Forum

In the case of a tenant paying *sayar*, and not rent in respect of a grove, he can be ejected only by a Civil

All the co sharers in *Sir* should join in a suit under S 86 of the Agra Tenancy Act to eject a sub tenant in *Sir* in whose favour one of the co sharers has executed a mortgage. (*Darling, S. M and Bomford, J. M*)

GHANA RAM

1938 A.W.R. (B.R.) 150 =
1938 R.D. 292

—S 86—Ejectment—Person in possession paying
sayar—If can be ejected—Appeal—New point of law

It is clear that a zamindar cannot under S 86 of the

and the defendant was admitted to a fresh tenancy of the holding and was given land under *Singhara*, in a subsequent suit for his ejectment the defendant cannot revive his claim to occupancy rights which was not recognised in the agreement which led to the decision of the earlier

RAM DAS 1938 A.W.R. (B.R.) 86 = 1938 R.D. 252.

—S 86—Ejectment of sub-tenant—Failure to
establish sub-tenancy—Effect.

—Ss 86 and 92—Suit to eject as heirs of statutory tenant—Father treated as non occupancy tenant—Suit, if maintainable—Fresh suit to eject, if lies

and son respectively on same day—Nature of the transaction—Ejectment, if can be had

Where a simple mortgage in favour of the mother a thekadar is executed on the same date as that

AGRA TENANCY ACT (1926), S. 86.

MOHAMMAD YAR KHAN.

1938 A.W.R. (B.R.) 249 = 1938 E.D. 547.

—S. 86—Suit for ejectment of sub-tenant—Demand of sub tenancy by person holding land for over 32 years

—S. 86—Suit to eject sub tenant—Plaintiff declared occupancy tenant at concessional rate—Sub tenants of land standing at concessional rate—If can resist ejectment.

Where a person was declared to be an occupancy tenant at the time of the revision of records and rent

NANDAN SINGH v. RAJA BRIJEND

1938 A.W.R. (B.R.) 361 =

—S. 86—Suit to eject tenant

Question if grove was planted by Zamindar or tenant—Burden of proof.

Where in a suit under Ss 86 and 92, Agra Tenancy Act, for the ejectment of the defendants as non-occupancy tenants from certain plots which are claimed by the plaintiff Zamindar to be his grove land, it is esta

ceedings Act, if apply to. See U.P. STS
DINGS ACT

—Ss 86 92—Suit under—Dismiss

Fresh suit under S. 44—If barred. See A

ACT, Ss. 44, 86 AND 92.

1938 R.D. 57 =

1938 A.W.R. 29 (B.R.)

—Ss. 86 and 92—Zamindar seeking to eject occupancy tenants under S. 79—Decretal sum paid by one of them raising money on mortgage—Death of mortgagor tenant—Surviving tenants—If can eject mortgagor as sub tenants

The Revenue Courts will not help an occupancy

an usufructuary mortgage, on the death of the mortgagor tenant the surviving occupancy tenants cannot eject the mortgagees as sub-tenants under Ss 86 and 92 of the Tenancy Act. (Darling, S. M. and Bomford J. M.) NAROTTAM v. SHIAM LAL. 1937 R.D. 342

—S. 95—Consent of landlord—Proof—Oral evidence—Admissibility. See AGRA TENANCY ACT, Ss 44 AND 95. 1938 A.W.R. (B.R.) 206

—S. 95—Object of—Ejected tenant holding over—

Liability of
Where a tenant after an order for his ejectment, holds on and retains possession of the holding, he there

AGRA TENANCY ACT (1926), S. 99.

by renders himself liable not only to criminal prosecution but also to a suit under S. 44 of the Tenancy Act. It is not open to such a person to take any technical point to prove re-admission for S. 95 was introduced in the

rent—If sufficient.
acceptance of rent by the zamindar is not evidence of a contract of tenancy. According to the Tenancy Act the re-admission of an ejected tenant should be in writing (Darling, S. M. and Mehta, J. M.) RADHEY MOHAN LAL v. RICHHPAL SINGH 1938 A.W.R. (B.R.) 320 = 1938 R.D. 788.

—Ss 97 and 98—Ejectment—Sowing done prior to—Ejected tenant, if entitled to value of crop at harvest, is entitled to be paid ch he has sown just landlord to take all ng and harvest. In

1938 A.W.R. (B.R.) 230 = 1938 A.L.J. (Supp) 44.

—S. 99—Applicability—Conditions—Act of 1901, S. 79—Relative scope—Rulings under—If proper guides in applying S. 99.

Under S. 99 of the Agra Tenancy Act of 1926, if a

herwise of the art. It in that land-der in rulings relied Act. (Ganga

8 R.D. 106 =

A.L.J. 1249 =

1938 A.W.R. 224 = 1938 All. 65.

—Ss. 99 and 121—Applicability—Hindu joint family having fixed rate tenancy—Suit by one member to set aside alienation of fixed rate tenancy by another member and for declaration that it is not binding on family—Jurisdiction of Civil Court—If excluded.

A suit by a member of a joint Hindu family seeking to set aside an alienation of family property made by

rare occurrence in a Revenue Court. The fact that the property alienated which is the subject matter of the suit is a fixed rate tenancy, which is both heritable and transferable does not exclude the jurisdiction of the Civil Court which is otherwise the proper Court to decide the question arising in such a case. The fixed rate tenancy belongs to the entire joint family of which the plaintiff is a member, and it is the family and not the plaintiff that is the tenant thereof. Ss 99 and 121 of the Agra Tenancy Act are wholly inapplicable to such a suit, as the plaintiff and the alienating members are not co tenants in the strict sense of the term but they

AGRA TENANCY ACT (1926), S. 99.

are members of a coparcenary body to whom the fixed-rate tenancy belongs. There is consequently nothing in those sections read with S. 230 and Sch. IV of the Act to exclude the jurisdiction of the Civil Court. (*Asimattullah and Harris, J.J.*) DEOKINANDAN PANDEY v. RAM CHANDRA TEWARI. I.L.R. (1938 A 40=173 I.C. 180=10 B.A. 470=1938 A.L.R. 10=1937 A.L.J. 905=1937 A.W.R. 91=1937 B.D. 551=A.I.R. 1938 All.

—S. 99—Applicability—Suit under S. 44—Zamindar supporting defendant's plea of surrender and admission—If converts suit into one under S. 99. AGRA TENANCY ACT, SS. 44 AND 99.

—S. 99—Applicability—Tenant but residing and not paying process Landlord ejecting subtenant on basis Suit by tenant under S. 99—Competence TENANCY ACT, SS. 32 AND 99.

—S. 99—Appropriateness of proceedings under. See AGRA TENANCY ACT, SS. 37 AND 99.

1937 A.W.R. 1205
1938 A.W.R. 45 (B.R.).

—S. 99—Dispossession, wrongful—Right to—Considerations.
Where a tenant is found to be illegal he cannot be denied compensation on that no crop was sown. The land sown by ploughings and weeding for season. Hence if a tenant is prevented from 'cultivating' the area, compensation for loss is called for. (*Darling S. M. and Mehta, J. M.*) KASHI SAHU v. SEKHAR SINGH. 1938 B.D. 882

—Ss 99 and 82—Ejectment—Remedy—Suit by ejected tenant under S. 99, after rejection of review of order of ejectment—If maintainable

Whether or not a tenant who has been ejected under S. 82 of the Agra Tenancy Act has a right in certain special circumstances to bring a suit under S. 99 he cannot certainly be allowed to do so where he has tried one remedy after another. An order rejecting an application for review of the order of ejectment when not appealed against should be treated as final. (*Darling, S. M. and Bomford, J. M.*) VIVEK SINGH MAJITHIA v. RAM LAL. 1938 A.W.R. (B.R.) 303=1938 A.L.J. (Supp.) 119=1938 B.D. 436.

—S. 99—Remedy under—When can be availed of See AGRA TENANCY ACT, SS. 44 AND 99.

1938 B.D. 248
—S. 99—Right of suit—Conditions to be complied with.

If a tenant pleads that he has been a fraudulent abuse of legal process, he comes under S. 99 of the Tenancy Act, but availed himself of the other remedy by way of review and appeal. In finding that the decree holders were guilty of fraud the suit was not maintainable. (*Darling, S. M. and Bomford, J. M.*) SHEO PRASAD GUPTA v. MANDIL SINGH. 1938 A.W.R. (B.R.) 235=1938 B.D. 541

—S. 99—Right of suit under—Ejectment for arrears of rent—Proof of fraud—Effect

Where in a suit for ejectment for arrears of rent, there has been fraud and a tenant has thereby been ejected the ejectment is not in accordance with the

AGRA TENANCY ACT (1926), S. 107.

—S. 99—Scope—Retrospective operation—Cause of action arising before Act.

S. 99 of the Agra Tenancy Act has no retrospective effect and does not oust the jurisdiction of the Civil Court in respect of a suit the cause of action for which arose prior to the coming into force of the Act. (*Ganga*

; Zamindar for wrongful the Agra Tenancy Act claiming in his plaint that he was a member of a joint family with the deceased statutory tenant but the Assistant Collector found in his favour on the ground that he was heir to the deceased tenant as being his nearest collateral who had co-shared in cultivation with him at his death, the decision operates as *res judicata* on the

—S. 99—Suit under—Time spent in futile application for review—Benefit of S. 14 of Limitation Act if available. See LIMITATION ACT, S. 14—BENEFIT OF. 1938 B.D. 469.

—S. 99 Proviso—Applicability—Order for ejectment in execution of rent decree—No actual ejectment—Subsequent lease to another—Suit by original tenant under S. 99—Reliefs to which parties are entitled

In execution of a decree for arrears of rent, an order for ejectment was obtained. But the Zamindar did not apply for actual ejectment. He nevertheless leased the property to a different person. The original tenant thereupon filed a suit under S. 99 of the Agra Tenancy Act. It was held that he was entitled only to damages and at the same time was liable to ejectment under the Act in the year 'in which the suit was brought' and that the proviso to S. 99 applied. (*Darling, S. M. and Bomford, J. M.*) BABU LAL v. PAL. 1938 A.L.J. (Supp.) 1=1938 A.W.R. 33 (B.R.)=1938 B.D. 310.

—S. 99 (1)—Claiming through the landholder's

—Meaning

of a land-
tenancy
a suit
AR v.
(B.R.).

—S. 107—Related application—Inference.
A zamindar who makes an application under S. 107 of the Tenancy Act, a year after he has taken possession, is invoking the aid of the Court under false pretences. Such an application is not intended to legalize *ex post facto* a trespass already committed. (*Bomford, J. M.*) BHAGWATI PRASAD v. SUNDAR KOFRI. 1938 A.W.R. (B.R.) 225=1938 B.D. 359

—S. 107—Scope—Abandonment by tenant-in-chief—Claim by sub-tenant to be tenant-in-chief—Burden of proof—Zamindar's right of ejectment—Delay in suing—Effect of.

In the case of a holding which is abandoned by occupancy tenant, the person put in possession

AGRA TENANCY ACT (1926), S. 107.

former tenant-in-chief cannot claim himself to be the

proves that the zamindar has recognised him as such. The burden is of course on the sub tenant claiming to be tenant-in-chief, but when the zamindar delays taking actions for many years, the standard of the tenant must be lowered. (*Bomford, J.M.*)

NARSINGH TEWARI v. KESHO RAI

1938 A.W.R. (B.R.) 101=

—S. 107—Tahsildar's duty before passing an order under.

Before passing an order under S. 107 of the Agra Tenancy Act, a Tahsildar should be really satisfied that the tenant has abandoned. (*Bomford, J.M.*) BHAGWATI PRASAD v. SUNDAR KOERI

1938 A.W.R. (B.R.) 225=1938 R.D. 559.

—S. 107 (1)—Abandonment—Tenant disappearing—No arrangement made for payment of rent—Zamindar's right

Where a tenant has abandoned and left the village without making any arrangements at all for the payment of rent to the zamindar, the case comes under Sub Cl. (1) of S. 107 of the Tenancy Act and 'straightaway give a lease of the holding'. (*Bomford, J.M.*) RAGHURAJ SINGH, 1938 A.W.R. (B.R.) 145=1938 R.D. 400.

—S. 107 (1)—Abandonment—Tenant quitting holding without leaving any holding in charge—Effect

have clearly abandoned his holding as explained in S. 107 (1) of the Tenancy Act and as such the zamindar

—S. 121—Remedy of ejected tenant

With the formal ejectment of a tenant in proceedings under S. 79 of the Tenancy Act, his tenancy is completely concluded. The decree holder to the tenant remains in possession and carries on negotiations cannot on the failure

S. 121 of the Act for a declaration, for, being no longer

ner challenging alienation by another coparcener—Property alienated consisting of fixed rate tenancy—Jurisdiction of Civil Court. See AGRA TENANCY ACT, 1937 A.W.R. 919=

A.I.R. 1938 All. 17.

AGRA TENANCY ACT (1926), S. 123.

—Ss. 121-123—Applicability—Tenant of grove

—S. 121—Declaratory suit—Absentee tenant claiming share in tenancy—Disentitling circumstances.

Where a tenant who has been absent for a long time, entitled to a share in the joint holding of the defendant.

dants have perfected their rights by adverse possession for the required period. (*Darling, S.M. and Bomford, J.M.*) GANGA PANDE v. SHEONET PANDE.

1938 A.W.R. (B.R.) 257=1938 A.L.J. (Supp.) 50=1938 R.D. 539.

—Ss. 121 and 123—Grove holder, if can get a declaration under.

A grove holder is one of those persons who could get a declaration in his favour under Ss. 121 and 123 of the Agra Tenancy Act. (*Darling, S.M. and Mehta, J.M.*) BINDHACHAL RAI v. MOTI RANI.

1938 A.W.R. (B.R.) 282 (2)=1938 A.L.J. (Supp.) 91=1938 R.D. 627.

—S. 121—Necessity of suit under—Possibility of declaration under S. 42 of U.P. Land Revenue Act against the landlord. See U.P. LAND REVENUE ACT, S. 42.

1938 R.D. 837.

—S. 121—Necessity of suit under—Possibility of declaration under S. 42 of U.P. Land Revenue Act against the landlord. See U.P. LAND REVENUE ACT, S. 42.

rights Where a widow of an occupancy tenant, whose name

has been removed from khataani as to loss of occupancy

1938 A.L.J. (Supp.) 11=1938 R.D. 280=1938 A.W.R. 40 (B.R.).

—Ss. 123 and 44—Plaintiff not in possession—

possession cannot sue under Act. It is his duty to sue for settlement of the defendants. (*Darling, J.M.*) MAHANGOO

GOND v. SHEO NATH GOND. 1938 R.D. 474.

—S. 121—Fixed rate of 'adam wasul'—

of a fixed rate tenancy including an amount payable must be the rent

recorded as such by the Settlement Officer and the mere fact that for some reason part was not being realized at the time of settlement will not make the whole amount any the less payable. Adam wasul means 'not realized' and not 'not realizable'. (*Darling, S.M. and Bomford*

AGRA TENANCY ACT (1926), S. 123.

AGRA TENANCY ACT (1926), S. 132.

v. NOOR MOHAMMAD. 1938 A.W.R. (B.R.) 358—
1938 R.D. 746.

—S. 123 (c)—Enquiry—Scope—Duty of Court—Parties both agreeing that rent was fixed—Difference as to amount—Power of Court to hold no rent fixed—Procedure.

Where both parties to an application under of the Agra Tenancy Act agree in saying that has been definitely fixed, but they differ as to amount at which it was fixed, it is not open to Court to hold that no rent has been fixed at Court is bound to decide only as to what was the rent fixed (*Darling, S.M. and Bemsford, J.M.*) *RAN SAJAWAN v. GANESH PRASAD* 1938 R.D. 96—

1938 A.W.R. 51 (B.R.).
—S. 123 (c)—New plea—Application for declaration of rent—Denial of relationship of landlord and tenant—When to be raised—Plea in appeal—If open.

In an application for declaration of the amount of rent, the tenant-defendant denying the relationship of landlord and tenant must specifically plead it in his written statement, and must see that an issue is fixed on the point. He cannot be allowed to take the point for the first time in an appeal.

Other cases illustrating the principle of proof.

In a suit by a Zamindar under S. 123 (c) of the Tenancy Act for a declaration of the rent payable by his statutory tenant, the burden of proving, in the absence of a lease, *khatauns* lie (*Darling S.M.*) *MOHOBBE A.*

—S. 1:

of grain rent

—Claim to

"Siwal",

collected at

about three years and then sues for arrears of his grain rent under a provision of law which is primarily intended for the recovery of cash rent should not be allowed to charge interest at 25 per cent. should not allow him more than allowed on cash rent arrears.

nue Act, nor does it come under S. 86. But that *Nadhwana*, must be included in 'Sayar' is clear from the definition of 'Sayar' which includes irrigation charges. Dues which come under the definition of 'Sayar' can be sued for under S. 132 of the Agra Tenancy Act provided they are 'payable', and they are entirely different from

co-sharer—Demarcation of ex proprietary tenancy and fixation of rent—Right of vendee to sue for arrears of exproprietary rent, independently of other co-sharers—Agency, if can be implied.

Pec Darling, J.M.—Where in Khata khewat forming a part of a divided mahal the co-sharers are in possession of their respective shares in the shape of Sir and Khudkasht, and on a sale by one of the co-sharers of his proprietary rights though the vendee gets the ex-proprietary tenancy demarcated and rent fixed, yet he cannot sue alone for the arrears of this rent, as the tenant is the tenant of the whole coparcenary body.

Per Alagh J. A.—The language of S. 266 of the

1938 R.D. 806.
—S. 132—Scope—Suit under S. 123 (c) for arrears of rent—Rent shown in papers as Rs. 12 plus

plaintiff did not take the order in revision.

Held, that the order should stand as final for the purposes of a rent suit until and unless the Zamindar

1938 A.W.R. 49 (B.R.).
132 and 265 (1)—Shamilat patti—Right of Co-sharers, if can sue separately for rent—Usage, what may not amount to

Per Darling, S.M.—In the case of a shamilat patti, a landholder is entitled to collect the rents, in the absence of any usage or contract to the contrary. As such, a co-sharer of a solitary statutory holding in the shamilat patti, cannot sue alone for arrears of rent in respect of it. The fact that a particular co-sharer used to

224 AND 132.

1938 R.D. 565
—S. 132—Appraisal—Landlord resorting to remedy under S. 132—Duty as to proof.

Where a landholder resorts to S. 132 for relief, of the than to the procedure prescribed by Ss. 137 to 139 rather Tenancy Act, he cannot expect the Courts to

AGRA TENANCY ACT (1926), S. 132.

... a usage
cy Act.
e of the
term usage used in S. 403 (1) is that it is a usage to the contrary to what takes place normally, that is, a lambardar collects rent but a usage may be set up by which, it is not the lambardar who collects rent but somebody else, or by usage, it is not all co-sharers who collect rent, but somebody appointed by Where a course of practice has ripened which has been embodied as a result of tion of the co sharers into an entry in t it ought to be respected and individual ed to sue separately for arrears of rent. (*Darling, S. M. and BOMFORD, J. M.*)

R. 2.

by defe
Whe

Tenancy Act, the defendant admits the claim in part, then the Court should decree the rest of that claim.

—Ss 132 and 45—*Suit for arrears competent, when rent not settled—Proper*

A suit for arrears of rent could only the rent was fixed from before. So it is for a Court to fix rent in a suit for arrears is unsettled, the proper course is for a it fixed by a suit under S. 45 of the T then sue for arrears under S. 132. (*M.*)

—Ss 132(2) and 218—*Land occupied by tenants—Lease of tenants' rights—Position of—S. 132 (2) of can be used against such a person*

Though a proprietor can give as many leases as he likes, he cannot imperimpose a tenant over existing tenants. Where land is already occupied to a great extent by

... cannot be used as against a thekedar for recovery of arrears of rent in respect of such a lease. (*Darling, S. M. and BOMFORD, J. M.*)
RAM NATH SINGH v. SECRETARY OF STATE.
1938 E. D. 796.

—Ss. 132(2) and 252—*Order by Collector on*

respect of any order that may be passed thereon. (*Darling, S. M. and BOMFORD, J. M.*) RAM NATH SINGH v. SECRETARY OF STATE. 1938 E. D. 796.

—Ss 175 and 179—*Suits under—Claims for compensation—Distinction—Separate suits—Necessity.*

While compensation can be claimed either under S. 175 or S. 179 of the Agra Tenancy Act, the difference between the two is that compensation will be given under S. 175 if there were no arrears at all, while it will be given under S. 179 if there has been irregularity in procedure. Suits under S. 175 and S. 179 are really distinct with distinct causes of action and separate periods of limitation. An aggrieved party desirous of

AGRA TENANCY ACT (1926), S. 196.

coming under S. 176 or Ss. 178 and 179, has to file separate suits. (*Darling, S. M. and BOMFORD, J. M.*)
BABAR SINGH v. KUP SINGH.

1938 A.W.R. 34 (B.R.)=1938 E.D. 311.

—S. 184—*Rent-free grant—What amounts to—Mere non collection of rent—Effect.*

S. 184 of the Agra Tenancy Act lays down that land held rent-free in respect of which no liability to rent is

a rent free grant. (*Darling, S. M. and BOMFORD, J. M.*)

—Ss. 187 and 186 (1) (c)—*Grant held for over 70 years, but not by two successors to the original owner—Position of grantee—Sub tenants from—ability to ejectment.*

—Ss. 187 and 188—*Muafi khidmati grant—re and incidents of—Grantee of—Person holding*

—Status of—If sub tenant. See AGRA TENANCY ACT, S. 3 (7). 1938 E. D. 160=

1938 A.W.R. (B.R.) 91.

—Ss. 196 and 197—*Applicability—Occupancy holding—Plot planted with trees—Sale in execution—Purchaser—Right of—Surrender of holding by tenant to landlord—Purchaser's right to be recorded as grove holder.*

in execution of a decree of a Civil Court a and comprised in the holding of an occupancy with trees thereon—the number of trees being such as make the plot a grove—if sold, the purchaser who gets possession of the plot through the Civil Court is entitled to be recorded as grove holder of that plot under Ss. 196 and 197 of the Agra Tenancy Act, when the occupancy tenant surrenders the holding to his land

the implied changes the be mortgag-ght to use the er of grove

(*Darling, S. M. and BOMFORD, J. M.*) SARDHA DIN v. MASURIA DIN. 1938 E. D. 147=

1938 A.W.R. 80 (B.R.).

—Ss 196 and 197—*Mahant allowing persons to plant groves—Right to eject—Limits.*

Where a Mahant allows persons to plant groves, they become grove holders and are not trespassers. Grove-holders as long as they look after their trees and pay their rent regularly cannot be ejected as trespassers. (*Mursh, J. M.*) GORAKH NATHJI v. SWAMI NATH LAL. 1938 A.W.R. (B.R.) 315=1938 E.D. 623.

—Ss 196 and 197 (h)—*Scope of—Planting of grove by occupancy tenant with permission of land-*

AGRA TENANCY ACT (1926), S. 221.

S. 221—Village expenses—Right to recover—Proof of incurring of expenses—Necessity.

A claim for village expenses cannot be allowed in the absence of any evidence to show that the Lambardar had incurred any such village expenses. (*Darling, S.M. and Bomford, J.M.*) **HARDEI v. RAM SARUP.**
1938 E.D. 127=1938 A.W.R. 4 (B.E.).

S. 223—Suit by assignee of revenue—If can be brought against lambardar alone.

A suit under S. 223 of the Tenancy Act by the assignee of revenue should be brought against all the

sub-proprietor for rent—Suit filed under S. 132, if can be converted into one under S. 224.

The remedy of a plaintiff musafid for recovery of the rent due from the *Sirdars* who are sub-proprietors under S. 4 (16) of the Tenancy Act, lies by way of suit under S. 224 and not S. 132 of the Act. Such suits are triable only by an Assistant Collector of 1st class. Consequently, where the suits are lodged under S. 132 in the

dues—Forum—Civil or Revenue Court.

Where by an order of the Settlement officer a certain percentage of the assets was fixed as *malikana* payable to a superior proprietor by an inferior proprietor, it represents the former's share of the rent payable by the tenants to the landholder and so the words 'rent due to him as such' in Tenancy Act S. 230 of the Agr comes applicable to such a suit and respect of a *malikana* would not

operate as res judicata.

It cannot be held that a decision as to the rate of profits operates as a *res judicata*, for circumstances governing the rate of profits differ from year to year. (*Darling, S. M. and Bomford, J. M.*) **SHIVA HANS PANDEY v. RAJMAN PANDEY.**
1938 A.L.J. (Supp.) 11=1938 A.W.R. (B.E.) 300

1938 E.D. 441.

S. 227—Co-sharers—Realisation of rent—Method—Excess realisation by one—Remedy of others—Suit for profits

Every co sharer in a joint mahal is entitled to realize

profits according to the *Jamabandi*. In a suit for

satisfaction of the claim of such co sharers who may not

AGRA TENANCY ACT (1926), S. 227.

have realized the share of the rent from those tenants.

v. MAN SINGH

S. 227—Co-sharers—Suit by one for profits—Mortgage of specific plots from one co sharer—Decree against—If can be passed.

Where a co-sharer mortgages specific plots of which he is in exclusive possession, the Court in a suit for pro-sharer should regard the mortgagee as a single mortgagor under S. 227 of the mortgage from the co-SHEOMURAT SINGH v.

BIP NARAIN SINGH 174 I.C. 60=10 E.A. 585=

1938 E.D. 139=1938 A.L.E. 228=

1937 A.L.J. 1354=1938 A.W.R. 19 (H.C.)=

A.I.R. 1938 All. 108.

S. 227—Gonwandhar—Right to sue for share of profits of mahal.

A *gonwandhar* has no share in a *malhal* as defined in S. 4 (4) of the Land Revenue Act. Therefore, he cannot

or a share of the profits of a *malhal* under the Tenancy Act. (*Darling, S.M. and J.M.*) **RAM LAKHAN SINGH v. RAM SINGH.** 1937 E.D. 337.

227—Lambardar—Suit for settlement of accounts—Competency.

Every lambardar is a co-sharer first, and the fact that he is a lambardar does not make him any the less a co-sharer, and a lambardar is competent to maintain a suit

for settlement of accounts under S. 227 of the Agr

When a co sharer sues a collecting co sharer for profits under S. 227 of the Tenancy Act, there is no reason why the sole collecting co sharers should not share with the other co-sharers the profits actually realised. (*Darling, S.M. and Bomford, J.M.*) **MADAN v. RAM GOPAL.** 1938 A.W.R. (B.E.) 163=

1938 E.D. 373.

S. 227—Suit for profits—Maintainability—Purchaser from co-sharer obtaining decree for proportionate share of ex proprietary rent only—If can sue for profits.

Where a purchaser from a co sharer obtains a decree,

In a suit under S. 227 of the Agr Tenancy Act, for

miss a suit on that ground. If necessary damages may

AGRA TENANCY ACT (1926), S. 230.

be awarded to the other party. (*Darling, S. M. and Mehta, J. M.*) **RAN BHAROSE v. SUNDAR LAL.**

1938 R.D. 826

—S. 230—*Applicability—Suit for return of sum advanced for zarpeshgi on repudiation by heir of grantor—Jurisdiction of Civil Court*

A suit by a person for return of the money advanced by him in consideration of a *zarpeshgi* lease, the validity of grantor tion for the Civil the Rev does not apply to such a case. (*Niamatullah and Aliet, J.J.*)

—Ss. 230 and 123—*Attachment, under decree for arrears, of crops in different zamindari—Distrainment by that zamindar—Civil suit to declare distrainment fictitious and that rent paid was on basis of bata—If barred by S. 230.*

Where a person who had obtained a decree for arrears of rent, attached certain share of standing crop, in a different zamindari, but the other zamindar distrained the whole crop for his own arrears, a civil suit to declare

—S. 230—*Bar under—Suit by a tenant against his cotenant for profits—Jurisdiction of Court Small Causes to try.*

Where the plaintiffs claim profits in proportion to the share in the holding on the allegation that they were co-tenants with the defendants, of certain land which was exclusively in the cultivation of the defendants, the suit is exclusively cognizable by Civil Court. The bar provided by S. 230 of the *Agra Tenancy Act* will be effective only if the suit is of the nature specified in Sec 4 to the Act. The mere fact that the defendants alleged that the plaintiffs were not the tenants of the holding would not oust the jurisdiction of the Civil Court. (*Niamatullah and Ismail, J.J.*) **DATA RAM v. DHARA.**

I.L.R. 1938 AH 462=176 IC 514=

11 B.A. 117=1938 R.D. 725=1938 A.L.R. 639=

1938 A.W.R. (H.C.) 326=1938 A.L.J. 519=

A.I.R. 1938 AH 375.

—S. 230—*Jurisdiction of Revenue Courts—Test—*

minors and the lessee is in possession as a tenant, though the perpetual lease may be invalid, the relationship of landlord and tenant is established, and as such any agitation as to the invalidity of the lease cannot be carried on in a Civil Court. (*Bennet, A.C.J. and Verma, J.*) **TAHAD ALI v. ISRAR.**

1938 A.L.J. 1110=1938 A.W.R. (H.C.) 788=1938 R.D. 910.

Y. D. 1938-4

AGRA TENANCY ACT (1926), S. 242

—S. 230—*Relief falling within competence of Revenue Court—Jurisdiction of Civil Court.*

Where a landholder brings a suit that the transferee of a fixed rate tenant has no right to build a house on the ground that it does not constitute improvement, adequate relief can be granted by Revenue Court under Ss. 82 and 120 and hence only Revenue Court has jurisdiction to try the suit. (*Bennet and Verma, J.J.*)

—S. 234—*Jurisdiction—Decree for arrears of rent—Power of Assistant Collector to enforce decree.*

Collector of the second decree for arrears of rent an agreement to enhance rent. (*Darling, S.M. and Bomford, J.M.*) **KAM PRASAD v. KALI PRASAD.**

1938 R.D. 99=1938 A.W.R. (B.R.) 49.

—S. 237—*Theka granted by mortgagor pending foreclosure proceedings—Mortgagee agreeing to Thekadar being recorded as such on his undertaking to surrender possession after Civil Court's decree—Mortgagee applying for mutation after decree by Civil Court—Application opposed by Thekadar—Mortgagee's*

claim, that the possession of a proprietor was distinct from that of a *thekadar* and all that the mortgagee had been given by the Civil Court was proprietary possession and that if he thought that *X's theka* was really void *ab initio* or had come to an end in accordance with his promise, it was open to him to file a suit to get rid of him, and that a mutation case between proprietors was not the proper forum to decide whether *X's theka* had come to an end or not. (*Darling, S.M. and Bomford, J.M.*) **BHAWANI SHANKAR v. DULAREY LAL.**

1937 R.D. 391.

—S. 238—*Assistant Collector not empowered under to carry on sales—Proceedings before such officer, if null and void.*

Where an Assistant Collector is not duly empowered under S. 238 of the *Agra Tenancy Act* with the powers for the purpose of carrying out sale of rty, all the proceedings in his Court, in a decree for arrears of land revenue, are null and void. (*Darling, S.M. and Bharti, RAKSHPAL v. RAM SARUP.*)

1938 A.W.R. (B.R.) 254=1938 R.D. 557.

—Appeal against order under S. 144, C.P.

See AGRA TENANCY ACT, Ss 3 AND

1938 A.L.J. 988.

—S. 242—*Applicability—Court of a Small Cause Court Judge.*

A forum such as a Small Cause Court Judge has no jurisdiction at all under the *Agra Tenancy Act* as an appellate Court. S. 242 of that Act only refers to the Court of the District Judge and not to a Court such as the Court of the Small Cause Court Judge.

AGRA TENANCY ACT (1926), S. 242.

and *Verma, J.J.*) KASHI KAHAR v. ASHARFI SINGH.
 I.L.E. 1938 All 754-177 I.E. 450-11 R.A. 199-
 1938 A.L.R. 747-1938 A.L.J. 720-
 1938 A.W.R. (H.C.) 522-1938 R.D. 714-
 A.I.R. 1938 All 511.

—S. 242 (1) (a) and (d)—*Appeal to District Judge—Essentials*

Though a suit may be one under S. 221 of the Agra Tenancy Act, it is only when the amount of revenue annually payable is in issue that an appeal lies to the District Judge. When a person denies his liability to pay the amount claimed, there is no issue about the amount as there is no contention about it. (*Ganga Nath, J.*) MOHAMMAD YUSUF ALI KHAN v. SHIAM KUNWAR.
 174 I.C. 448-1938 R.D. 144-
 1938 A.L.R. 275-10 R.A. 576-
 1938 A.W.R. (H.C.) 24-1938 A.L.J. 3-
 A.I.R. 1938 All 135.

—S. 242 (3) (a)—*Scope—Question of proprietary right—Whether lands are six lands or tenancies—Appeal to District Judge—if lies*

A question whether certain lands are the *sur* plots of a person or whether they are a question of proprietary S. 242 (3), Agra Tenancy Act lies to the District Judge would lie only to the C.

(*Sulaiman, C.J. and Harries, J.*) RAM CHANDRA SINGH v. MISIRILAL.
 I.L.E. 1937 All 958-
 172 I.C. 629-10 R.A. 418-1938 R.D. 18-
 1937 A.W.R. 888-1937 R.D. 532-
 1937 A.L.J. 1204-A.I.R. 1937 All 790.

—S. 244—*Mixed question of law and fact—Second appeal—Question of admission to tenancy.*

The question of admission to tenancy might be interpreted as a mixed question of law and fact and as such on that ground a second appeal might be admitted. (*Darling, S.M. and Mehta, J.M.*) NAND LAL v. WAJID ALI.
 1938 A.W.R. (B.R.) 547-
 1938 R.D. 672

—S. 244—*Second appeal—Interference—No doubt as to identity of plot—Difference in area owing to mistake in measurement—Court being misled.*

Where there is no doubt about the identity of the plot in question, but the Commissioner was misled by the difference in the area of the plot which was due to a mistake in the measurement, his order can be set aside in second appeal. (*Darling, S.M. and Mehta, J.M.*) MADHAI SAITHWAR v. TULSI KEWAT.
 1938 A.W.R. (B.R.) 373-1938 R.D. 735.

—S. 248 (3)—*Execution proceedings governed by O. 21, C.P. Code—Order confirming sale—Appeal—*
 1011-A

AGRA TENANCY ACT (1926), S. 252.

CL (3) of S. 248 of the Act. (*Darling, S.M. and Bomford, J.M.*) AMIR HASAN v. BADRI PRASAD.
 1937 R.D. 373 (1).

—Ss. 248 (3) and 252—*Stay of execution of decree for ejectment—Appeal, if lies to District Judge—Remission to Board—Competency.*

Where an Assistant Collector stays the execution of a decree of ejectment, the order though, one under S. 47, C.P. Code, will not be open to appeal to District Judge by reason of Ss. 248 (3) and 242. Hence it is open to revision by the Board under S. 252. (*Darling, S.M. and Mehta, J.M.*) HOLDSWORTH v. ZAMINDAR CHAUDHURI.
 1938 R.D. 801.

—S. 219—*Appeal—Order of remand by District Judge—Appealability—Remedy.*

The Agra Tenancy Act does not provide for an appeal from an order of remand, but the order can be questioned by a superior Court when the final decree is appealed from, under S. 105 (1), C.P. Code, which applies to suits and appeals under the Tenancy Act, though S. 105 (2) does not apply, as the Tenancy Act does not allow an appeal from an order of remand.

—Ss. 249 and 3, CL (14)—*Second appeal from order passed under S. 47, C.P. Code, under Tenancy Act—If lies—Decree under Tenancy Act—Meaning of.*

The definition of a 'decree' given in S. 2, CL (2) of the C.P. Code, does not apply to the Agra Tenancy Act. Under the Agra Tenancy Act, a 'decree' as defined in S. 3, CL (14) means any order which so far as the Revenue Court is concerned, finally disposes of a suit. So it does not include the determination of any question within S. 47, C.P. Code. Any order passed under S. 47 is not a decree but remains an order under the Agra Tenancy Act. Hence no second appeal would lie from an order passed under S. 47, C.P. Code, under the Tenancy Act. Where a lower appellate Court assumes jurisdiction in a matter, treating it as one in which a second appeal is allowed by a statute, a second appeal would lie to the High Court and the High Court could then correct the mistake of the lower Court. But it is not so in a case which, as treated by the lower Court, is one in which a second appeal is expressly prohibited by the statute. (*Ganga Nath, J.*) DHARAM SINGH v. TIKAM SINGH.
 174 I.C. 481-10 R.A. 688-
 1938 A.L.R. 280-1938 A.L.J. 63-
 1938 R.D. 149-1938 A.W.R. (H.C.) 63-
 A.I.R. 1938 All 124.

—S. 252—*Failure to award costs—Remission.*

Failure to award costs has, no doubt, been held to be an error which may be corrected by the Board. It is undesirable that applications for revision in trivial cases should be entertained when the case is small. (*Bomford, J.M.*) MAHEBOOB
 1937 R.D. 379

—S. 252—*Application under S. 132 (2) of the Tenancy Act—If revisable. See AGRA TENANCY ACT, Ss. 132 (2) AND 252.*
 1938 R.D. 796.

—S. 252—*Powers of revision—Improper admission of application under S. 132 (2)—Interference.*

The Board has full powers of revision under S. 252, if the Collector has improperly admitted an application under S. 132 (2) of the Act against a Thekadar, notwithstanding the provisions of S. 216 of the same Act.

(*M. and Bomford, J.M.*) ASA RAM v. PARMA.
 1938 A.W.R. (B.R.) 158-1938 R.D. 251.

—Ss. 248 (3) and 228—*Order of Collector confirming sale in execution of decree for profits—Appeal—Forum.*

An appeal against an order of Collector confirming a sale in execution of a decree for Rs. 225 passed in a suit for profits under S. 226 of the Agra Tenancy Act, lies not to the Commissioner, but to the District Judge under

AGRA TENANCY ACT (1926), S. 252.

(*Darling, S.M. and Marsh, J.M.*) SECRETARY OF STATE v. RAM NATH SINGH. 1938 E.D. 798.

—S. 252—Revision—Competency—Order staying execution of decree for ejectment. See AGRA TENANCY ACT, SS. 248 (3) AND 252. 1938 E.D. 801.

—S. 252—Revision—Grounds—Absence of hard and fast standard as to what is an illegality or irregularity.

and fast standard or irregularity as Collector's finding record and he had

the Board's interference in revision. (*Darling, S.M. and Bomford, J.M.*) SAHDEO v. RAM SARAN. 1938 E.D. 742 = 1938 A.W.R. (B.R.) 359 (2).

—S. 252 (c)—Material irregularity—Assistant Collector giving plaintiff only 3½ weeks to deposit fees for fresh summons—Dismissal of suit on default by plaintiff—Interference in revision—C. P. Code, O. 9, R. 5.

Under R. 5 of O. 9, C. P. Code, a period of three months is allowed to a plaintiff when a summons is returned unserved. Where, therefore, in a suit for profits under S. 226 of the Agra Tenancy Act the Assistant Collector only allows the plaintiff some 3½ weeks within which to furnish a new application and to deposit

—S. 265—Admission to tenancy by Lambardar after he ceased to have any share in the patti—Validity. Where a lambardar had ceased to have any share in

AGRA TENANCY ACT (1926), S. 266.

(*Bomford, J.M.*) SAHDEO v. RAM SARAN.

1938 A.W.R. (B.R.) 359 (2) = 1938 E.D. 742.

—S. 265—'Usage'—What may not amount to—Significance of the term. See AGRA TENANCY ACT, SS. 132 AND 265. 1938 E.D. 816.

—S. 266—Co sharers—Suit by one only for arrears of rent—Competency—Plea that suit not maintainable—When to be raised.

One of several co sharers cannot maintain a suit for arrears of rent. The tenant can plead that the suit by one co sharer only is not maintainable and he can raise this plea at any stage. The mere fact that one of the

in show that he is their usage or contract to (*Bomford, J.M.*) RAJ

KUNAR RAI v. RAM LAKHAN.

1938 A.W.R. (B.R.) 105 = 1938 E.D. 169.

—S. 266—Joint patti—Ejection of heir of statutory tenant—Suit by some only of the co sharers—Maintainability—Burden of proof.

The landholder is the person entitled to sue for ejectment of an heir of a statutory tenant; and the landholder in the case of a joint undivided patti is either the lambardar or the whole coparcenary body of co sharers, or that co sharer who is entitled to receive the whole rent of the tenant. In a suit for ejectment of the heir of a statutory tenant by two of the sharers, who do not form the whole coparcenary body and neither of

a plaintiff to a right to the absence n be made. OSA v. BIJAI R.D. 163 = t. (B.R.) 99 incy—Power

of one of several co sharers

The granting of a lease of agricultural plots is permitted by the Tenancy Act and every owner of an agricultural plot of land is therefore competent to grant a

1938 A.W.R. (H.B.) 199 = 1938 A.L.J. 333 = A.I.R. 1938 All 316.

—S. 266—Scope of—Language, if allows agency implied. See AGRA TENANCY ACT, SS. 132 AND 1938 E.D. 806

—S. 266 (2)—Applicability and scope—Sale of statutory rights along with mahal—Undertaking to pay rent of expropriatory holding to vendor—Latter given right to collect whole rent—Undertaking acted upon for 50 years—Usage in mahal for expropriatory tenant to pay whole rent to vendor who accounted to co sharers—Effect of—Right of vendor to realise entire rent.

—S. 265—Lambardar—Right to sue for rent—Absence of share in patti—Onus

The lambardar cannot sue for rents in a patti in which he has no share, but it is for the defendant concerned to prove that his field represents a property in which the lambardar has no share. (*Darling, S.M. and*

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of the submergence and the re-formation the land was wholly lost and absorbed and no part of its surface remained capable of identification in no way militates against the title based upon the re-formation. But a title founded on original ownership and identification of

AMENDMENT. See PRACTICE—PLEADINGS

—Of decree. See C. P. CODE, S. 152.

—Of plaint. See C. P. CODE, O. 6.

APPEAL—Appellate Court—Functions and duties of Court of first appeal—Necessity for determination of all questions of fact

It is the function and duty of a Court of first appeal to determine all the questions of fact necessary for decision of the issues in the case. It might think that on a particular issue the burden of proof is on the plaintiff or on the defendant and its view on that may affect its finding. In that case it would do well to say what view it would take of the disputed question of fact had it placed the burden on the other party. It would then be possible for the Court of first appeal to avoid all the unnecessary harassment to the parties which is involved when in second appeal it is found that there is no altered set of facts to which the law can be applied. (Rowland, J.) RAJPAI NARAYAN SINGH v KIRIT NARAYAN SINGH. 173 I C 599—4 B R 299—10 R P. 424—18 Pat L T 806—1937 F W N 578—A I R. 1938 Pat. 71.

Appellate Court—Power—Remand on issues not raised in pleadings—Competency.

Madan, J.) BARAIK RAM GOBIND SINGH v CHOWRA URAON. 16 Pat 632—1938 F W N 78—173 I C 644—4 B R 315—19 Pat L T 259—10 R P. 430—A I R 1938 Pat 27

—Competency—Decree—Appeal—Reflection—Effect—If supercedes a decision of accidental slip on review passed under S. 152 or under original decree—Maintainability—superceded.

made absolute then the third stage is reached. The case is then heard on the merits and may result in a repetition of the former decree or in some variation of it. In either case the whole matter having been reopened, there is a fresh decree. When the Court rejects a review application holding that there is no error in the order is passed stage. There is no role in the investigation character of the order made. When the rule is dis-

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stage, there is no fresh decree decree, the parties being relegated on the old decree. In such a original decree is not barred, d the appeal cannot be dismissed on the ground that the order dismissing the review application has the legal effect of vacating the decree from which the appeal is filed. Nor can the correcting of an error arising from an accidental slip bring into existence a fresh decree barring the right of appeal from

Such correction must in truth be er passed in exercise of the powers S. 152, C. P. Code, though the ad the order on a review application, purporting to act under the review provisions of the Code. An amended decree must, in the contemplation of law, be taken as in force from the date of the original decree, as there is a well-founded distinction between a case of amendment and a case of novation or substitution. In the case of the amended decree, an appeal therefrom is perfectly competent. (Venkatasubba Rao and Abdur Rahman, J.J.) PAKKIRI MAHOMED ROWTHER v. SWAMINATHA MUDALIAR 1938 M.W.N. 250—47 L W. 474—A.I.R. 1938 Mad 573—(1938) 1 M.L.J. 786.

—Competency—Preliminary decree in mortgage suit—Appeal—Omission to apply for stay of proceedings—Subsequent final decree—Failure to appeal from—If bar to maintainability of appeal from preliminary decree.

Pending an appeal from a preliminary decree in a mortgage suit the trial Court made a final decree. The appellant did not ask for a stay of proceedings after he instituted his appeal nor did he file an appeal against the final decree. At the hearing of the appeal a preliminary objection was raised that the appeal was not competent.

It is held that the appeal from the preliminary decree is competent.

to vary or reverse or affect the final decree. and Norman, J.J.) BASAWANT v. KAL. 175 I C 43—10 R B. 515—40 Bom L R. 164—A I R. 1938 Bom 222.

—Failure by party to appeal—Party, if debarred

parties against whom relief is sought. There is no reason for distinction in this respect between a Letters Patent appeal or any other appeal. (Young, C.J. and Mowat, J.) KAMESHWAR DAS v OFFICIAL RECEIVER, DELHI. I.L.R. 1938 Lah 398—

can be raised for the first time in appeal.

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Parties—Pro forma assendane

Where persons were joined in a suit as *pro forma* defendants as they did not join as plaintiffs and where no issues were framed with respect to their interest and where none of these persons are interested in the result of the litigation, such persons are not parties to the appeal in that suit.

J.J. SABITRIBAI v. JAGA
43 C.W.N.

Question of fact—Inference of intention from circumstances.

Whether a particular intention can be inferred from a particular set of circumstances is rather a question of fact than of law. (*Sir George Lowndes*) BALASUBRA NANYA PANDYA THALAIYAR v. SUBBIA TEVAR

65 I.A. 93 = I.L.R. 1938 Mad 551 =
1938 A.W.R. (r.C.) 62 = 66 C.L.J. 581 =
40 Bom.L.R. 704 = 32 S.L.R. 328 =
1938 A.L.J. 215 = 4 B.E. 251 = 42 C.W.N. 449 =
10 R.P.C. 162 = 19 Pat.L.T. 169 =
172 I.C. 724 = 47 L.W. 110 =
1938 H.W.N. 117 = 1938 O.L.R. 61 =
1938 O.A. 51 = 1938 A.L.R. 77 =
A.T.D. 1022 D.C. 91 = (1938) 1 N.Y.T. 496 (P.C.)

Right of—Necessary party impleaded in suit but not in appeal—Such party, if has right of second appeal

Where a necessary party is impleaded in a suit but not impleaded in first appeal, such a party has a right of second appeal as he is interested in its right decision. (*Bhadr, J.*) PALA SINGH v. MT. HARNAMI

177 I.C. 632 = 11 B.L. 348 (2)
A.I.R. 1938 Lah.

APPROPRIATION. See CONTRACT ACT, SS. TO 61

ARBITRATION — Award—Criminal complaint misappropriation—Disputes between parties referred to arbitration—Criminal Court not compounding case—Award acquitting accused holding that there was no misappropriation—Validity

After filing a complaint for criminal misappropriation the parties submitted their disputes, the chief one con-

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that the arbitrator has determined only such matters as

were in dispute and were referred to him, and that the burden of proving that the arbitrator has awarded on matters not within the submission or has failed or

that the arbitrator has determined only such matters as were in dispute and were referred to him, and that the burden of proving that the arbitrator has awarded on matters not within the submission or has failed or

A.I.R. 1938 Sind 59.
Award—Nature of—Partition proceedings—Award declaring rights of parties in property without giving them possession—If merely declaratory.

In partition proceedings, the award declared the rights of the parties in the property and did not state that possession was to be given to the parties.

Held, that the award was merely declaratory and hence possession of the properties could not be given in the parties in the execution proceedings. (*Tek Chand and Abdul Rashid, J.J.*) SANT LAL v. RAMAYA RAM.

40 P.L.R. 619 = A.I.R. 1938 Lah. 177.
Award—Setting aside—Grounds.

An award cannot be set aside on the ground of

there is no contro-
Bilaram, Ag.
HUSHALDAS v.
174 I.C. 334 =
1938 Sind 59.

Award—Setting aside of—Submission of specific question of law.

Where it is alleged that there was a submission of a specific question of law, it must be such that it can be

Award—Setting aside—Terms of reference directing physical partition—Award ordering sale of premises and dividing sale proceeds—Award—If should be set aside.

Where the terms of the order of reference direct the of partition of the with the assistance basis that each therein, the jurisdiction affecting a physical the premises and rules according to the terms of reference. (1) D1

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ARBITRATION ACT (1899), S. 15.

certain and cannot make the award uncertain. (*Rup-*

If any one of the arbitrators was not present at all the sittings, that would affect the validity of the award. (*Niyogi, J.*) *RAMDHAR RAM v. SANTADAR.*

178 I.C. 29—A.I.R. 1938 Nag. 492.

ated at Sialkot, Amritsar has no award, inas-
to arbitration
not be institut-
(*ed at Amritsar. (Addison and Din Mohammad, J.J.)*)

40=40 P.L.R. 598—A.I.R. 1938 Lah. 226.

1—Filing of award—Jurisdiction of.

attention that under the Arbitration Act to entertain proceedings is given to the District Judge alone and the Additional District Judge is not competent to entertain such proceedings is not maintainable as it is opposed to S. 21, Punjab Courts Act, which provides that the

Award—Validity—Piecemeal awards.

It is not competent to an arbitrator to decide a matter piecemeal and deliver several awards, unless he is so

SIAL. A.I.R. 1938 Lah. 838

S 11—Order declining to file award—Appeal.

There is no provision in the Arbitration Act for an award. But heard as a revision. BANK OF NOR-

40 P.L.R. 79 =

L. 1938 Pesh. S.

Conclusive nature

—Right to apply to Court for stay of arbitration proceedings.

The Court has a discretion to stay arbitration proceedings which have been initiated by a party on the

An award, once it is made and filed under the Arbitration Act, is conclusive of the matters which it decides until it has been set aside by legal process. A party dissatisfied with an award may either file a suit to set aside the award or he can apply under S. 14 of the Act.

A.P. BRIJMOHAN
42 C.W.N. 387.

rt — Effect of—
is its jurisdiction
can be raised in

able as if it were
art has to treat it
in aggrieved party
of the arbitrator
cannot be permit-

ted to raise the question in execution as the executing

of provisions—Architect settling cost of work redone.

L. 1938 All. 232.

—If a bar to en-

ard to which the
of a decree there-
a Judge has no
nullity and a sur-
is no bar to the
Akmal, A.J.C.)

ARBITRATION ACT (1899), S. 15.

Decree passed on award and executed by Court without objection—If ultra vires—Points decided in such proceedings—If res judicata.

Where in a reference to arbitral body company a decree is passed by executed without objection by the question whether the decree could Court or not does not become *res judicata* in such arbitrations because it is the award which has to be executed. It follows that the Court should ignore the decree and the execution of such decree is *ultra vires*. A fortiori a point decided in such *ultra vires* proceedings cannot become *res judicata*. It is the award which has to be enforced and it can only be enforced by the District Judge and no one else. A.I.R. 1933 Pesh. 66. Rel. on. (*Almond, J.C. and Mir Ahmad, J.*) PEOPLES BANK OF NORTHERN INDIA, LTD. v. PADAM LAL. 177 I.C. 659—11 E. Pesh 30—A.I.R. 1938 Pesh. 54

ARMS ACT (XI OF 1878), Ss. 18 and 20—Concealment of arms in loin cloth—Attempt to escape when challenged by Police—Offence committed.

Where the accused who was travelling on horseback at 4-30 in the morning attempted to be challenged by two *sowars* of the mounted was found carrying a spear-head concealed in a loin cloth.

Held, that the offence fell not under S. 19 but under S. 20 of the Arms Act. (*Stemp, J.*) JODH SINGH v. EMPEROR. 40 P.L.R. 921.

ASSAM LAND AND REVENUE REGULATION (I OF 1888), S. 71—Encumbrance—Interest acquired by adverse possession.

Obiter—The interest acquired by a person by adverse possession by remaining in occupation of an estate for 12 years or more before the revenue sale adversely to the old proprietors is not an encumbrance within the meaning of S. 71 of the Assam Land and Revenue Regulation. (*Mitter and Biswas, J.J.*) HIRANMAYA KUMAR PAL v. DEBENDRA CHANDRA SAH. 42 C.W.N. 913—67 C.L.J. 380

S. 71—Recorded or unrecorded proprietor—Purchasing estate from stranger—Revenue sale—Right to annul encumbrances.

If a purchaser at a revenue sale who was not a recorded or unrecorded proprietor and who was not responsible for the encumbrance on the estate, later on sells his rights to one who was a recorded or unrecorded proprietor at the time of the revenue sale, the latter would step into the shoes of the former, and would be entitled to exercise all the rights, including the right to avoid or annul encumbrances, which the former had acquired by his purchase. (*Mitter and Biswas, J.J.*) JITENDRA KUMAR PAL v. DEBENDRA CHANDRA SAHA. 42 C.W.N. 913—67 C.L.J. 380

ASSIGNMENT See LEASE
ATTACHMENT See also C.P. CODE, S. 60 AND O. 21, R.R. 46 AND 63.

Effect of—Administration suit—Decree—Attachment of money due to debtor by Co-operative Society under R. 22 (6) (a), Madras Co-operative Societies Act—If confers exclusive rights on Society as against other creditors.

An attachment creates no interest in, or charge on, the property attached in favour of the attaching creditors as against the other creditors. When an administrator, D. 1938—5

BANKER AND CUSTOMER.

ties of a footing, of the There

is no distinction in this respect between an attachment by a Civil Court under the C.P. Code and an attachment by a Registrar of Co-operative Societies under the Madras Co-operative Societies Act. The deposit of a money on any higher or by the Civil Court (*Madhavan Nair, J.*) NICHOLSON TOWN BANK, LTD., TANJORE v. VARADARAJALU NAIDU. 48 L.W. 819—1938 M.W.N. 1127.

Execution of a warrant of—If a judicial act.
It is a matter of considerable doubt whether the execution of a warrant of attachment by a process server can be considered a judicial act which may be considered as taking place at the earliest period of the day on which it takes place (*Grille, J.*) POONANCHAND SHEORATAN v. MT. FULABAI. 177 I.C. 971—A.I.R. 1938 Nag. 309.

BANKER AND CUSTOMER—Forged cheque—Payment—Liability of Bank—Negligence. See NEGOTIABLE INSTRUMENT ACT, S. 85. 1938 A.L.J. 504.
Liability of banker—Customer having private

Sanction of Advocate General—Necessity—C.P. Code, S. 92.

A banker is not entitled to apply what he knows to be trust funds in discharge of or in reduction of a debt of a customer who has two separate accounts one in respect of his private funds and another in respect of funds of which he is a trustee. If the banker does so, he can be compelled to make restitution of the moneys so applied. If the banker has the slightest knowledge or reasonable suspicion that the money is being applied or transferred by the trustee from the trust account into his private account in breach of a trust, and if he is

a co-trustee to recover such trust moneys wrongly applied by the banker in reduction of the private debts owed by the other co-trustee is governed by Art. 120 of the Limitation Act, and the right to sue accrues when the trust funds are wrongly transferred or misapplied. But if the plaintiff co-trustee is kept in ignorance of a breach of trust the right to sue does not accrue until the trustee becomes aware of the fact. Such a suit does not fall within the purview of S. 92, C.P. Code, a suit by a co-trustee against the banker to recover trust moneys misapplied by him and against another co-trustee for accounts does not come under S. 92 and may be instituted without the sanction of the Advocate-General (*Leach, C.J., and Krishnaswami Ayyangar, J.*) NAGAPPA CHETTIAR v. O.R.M.S. P. FIRM. 1933 M.W.N. 1017—44 L.W. 577—A.I.R. 1938 Mad. 999.

Negligence of customer—Liability—Facts to be shown
Even if there is a duty as between the banker and the customer in drawing a cheque in a proper mode, it must be shown in order to hold the customer liable for a

BANKER AND CUSTOMER

ligence in drawing cheques, that there was a breach of the duty by the neglect of some usual and proper precaution. (*Lord Wright*.) **MERCANTILE BANK OF INDIA, LTD. v. CENTRAL BANK OF INDIA.**

172 I.O. 745=42 C.W.N. 321=1938 O.L.R. 68 (2)=
65 I.A. 75=I.L.R. 1938 Mad. 360=
1938 O.W.N. 206=1938 A.L.R. 100=
1938 P.W.N. 152=10 Pat.L.T. 147=
1938 M.W.N. 552=4 B.H. 260=40 Bom.L.R. 713=
47 L.W. 329=32 S.L.R. 313=1938 A.L.J. 273=
10 R.P.O. 169=1938 A.W.R. (P.G.) 90=
11 C.L.J. 510=1938 O.A. 312=
A.I.R. 1938 P.C. 52=(1938) 1 M.L.J. 268 (P.O.)

—*Relationship—Nature of—Deposits on current account—If repayable only on demand.*

Where native bankers accept deposits on current account on a very extensive scale from their customers and conduct nearly every branch of ordinary banking business as it is understood in England, the relationship is not that of mere lender and borrower but there is an

Act—Prosecution of auditors of Bank for falsifications in balance sheet certified as correct—Or production of Bank's books—Legality—Right of tion to inspection—Duty of Court

There is really no conflict between S. 94 of P. Code, and the Banker's Books Evidence Act, as the latter Act is the only section which can be relied upon as containing any Cr. P. Code. But all that no officer of the Bank to which the Bank is not due any banker's book proved under the Act or the matters, transactions order of the Court or "Court" includes a Magi.

prevents an order being in the proper case. In a case of a Bank for offences in the balance sheet of the correct, an order for production under S. 94, Cr. P. Code,

state before the issue of the order not only what books he requires to be produced but also why their production is necessary with specific reference to the allegations in his complaint. Anything in the nature of a roving or fishing inspection of the books of a Bank should be prevented. But the prosecution cannot be denied the right of inspection of documents the production of desirable for the of the party P. D. SHAM.

BAR COUNCILS ACT (1926), S. 12.

DASANI v. SIR HUGH GOLDING COOKE.

I.L.R. (1938) Bom. 31.

BAR COUNCILS ACT (XXXVIII OF 1926), S. 10
—*Professional misconduct—Employment of unregistered clerk—Negligence in not finding out, if plaint was filed—Failure to account for money.*

An advocate was engaged to file a suit. The advocate employed an unregistered clerk and left the plaint with him for presentation. The clerk failed to file the plaint and thus the suit was not filed. The advocate however did not take care to see whether the suit had been filed by looking into the cause list and thus allowed his clerk to cheat his client. Besides this the advocate did not return an account for the money he had taken from his client for stamps and other incidental purposes.

Held, that the conduct of the advocate amounted to gross misconduct. (*Mya Bu, Offg. C.J., Ba U and Dunkley, JJ.*) **O. A. BARRISTER-AT-LAW, In the matter of.**

178 I.C. 398=

A.I.R. 1938 Rang. 423 (S.B.)

—**S. 10 (1)—Misconduct—Advocate misapprehend's moneys temporarily—Offence—Proper**

J. and Gentle, J.) An advocate who misapprehend's client's moneys is not fit to remain a member of an honourable profession of advocates of Court, and the High Court should be failing if it does not direct the advocate's name to be

misconduct.

J.J.) ABINASH CHANDRA v. HEMANTA
42 C.W.N. 1111.

(S. 3)—Complainant—Right to be heard.

3) of S. 12 of the Bar Councils Act cannot be intended to exclude the right of the Court to hear any person other than the persons mentioned in that subsection. It is in the power of the Court, and in any ordinary case it would be its duty to hear the complainant, if he so desires (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*) **ABINASH CHANDRA v. HEMANTA KUMAR.**

42 C.W.N. 1111.

—**S. 11 (5)—Assessment of costs.**

In a case where the complainant was unsuccessful before the tribunal whose findings were confirmed by the Court, the complainant was ordered to pay the costs of

BENAMI.

the Advocate both in the enquiry before the tribunal and in the hearing before the Court. He was also ordered to pay the fees of the shorthand writer preter in the enquiry before the Bar Council

BENAMI—Burden of proof.

deeds bear the benamidar's name is necessarily consistent with the benami case and is of no essential weight on one side or the other. Since therefore it is unlikely that there will often be any other relevant circumstances from which the conclusion can be drawn that a transaction is a benami one, the usual mode of proving that a purchase is a benami transaction is by showing that the

intention of the parties. All the peculiar circumstances and probabilities of each particular case must be carefully considered. Although no one of these taken by itself may be of any particular weight, they may afford any conclusive proof of the true ownership from one person to the other, yet a combination of some or all of them, and a proper weighing and appreciation of their value, may well raise such a presumption of real ownership as to shift the burden of

Where a transaction is once made out to be benami, it is evident that it disappears from the title, for that of the person benamed to the property is with *Varma, JJ*) **SHEO GOBI SINGH.** 1938 P W N. 738 = 19 Pat L T 687

—*Presumption—Purchase by wife*
There is no presumption that when a wife possessed of considerable wealth and considerable income purchases a property in her own name the property must be regarded as one purchased benami for her husband. (*D. N. Mitter and Patterson, JJ*)
MALEEH SHASHI MOULI NAG.

—*Proceeding against benamidar bound*

A benamidar is ordinarily deemed representative of the true owner, and proceeding by or against the benamidar the person beneficially entitled is fully affected by the rules of *res judicata*. Exceptions to this rule might exist only when the circumstances disclose a conflict of interest between the benamidar and the real owner. 46 I A. 1, Rel on. (*Mukherjee, J.*) **THAKUR DAS NATH v KESHAB CHANDRA GHOSH.** 42 W N. 497.

—*Proof—Evidence requisite.*

In order that a property may be shown to be benami, it is not only necessary to show that it was purchased by another's money, but it is necessary to show that it was purchased by that other, benami. But circumstances in

BEN. AGRA AND ASSAM CIV. COURTS ACT (1877), S. 11.

India are such and the habits of society are such, that

reming law.

dar cannot maintain a suit if the benami contravenes the provisions of any law. A benami cannot, therefore, sue for possession, where against the provisions of the Act in so far as it effects a sale or an indefinite period, neither of the Act if once it is found to be a non agriculturalist. (*Din Anand, J.*) **LALA V. JAGE RAM** 40 P.L.R. 284 = A.I.R. 1938 Lah. 789.

—*Suit by benamidar—Real owner's right to be joined as party.*

As the benamidar represents the real owner, it is open to the latter to apply to be joined in the action, but whether he is joined or not he is bound by the result of the action. (*K. Ghose and DAS NANDI*) 17 C.I.J. 320 = A.I.R. 1938 Cal 874.

BENGAL, AGRA AND ASSAM CIVIL COURTS

district for mere administrative purpose, each and every munsif is a munsif for the district, although by an administrative order he exercises jurisdiction over a limited part of the district. It is no doubt quite right and

A preliminary decree in a mortgage suit was passed in the Court of the 4th Subordinate Judge of a certain place. That Court was then abolished and the Court of the second Subordinate Judge of that place was placed in charge of the business of the fourth Court and the final decree in the mortgage suit was passed by the

for execution to the third Court. There was a sale but that sale was set aside. After that fresh sale processes were served but before the sale date, the execution case was transferred under the District Judge's order to fourth Court which had been reinstated in the sale was held and confirmed by the fourth Court.

Held, that the whole of the proceedings as a result of orders properly made by the District Judge in pursuance of his powers under Ss. 9 and Civil Courts Act (*Derbyshire, C. J.* and **SISIRCHANDRA DUTT GUPTA v.**

BEN. AGEA AND ASSAM. CIV. COURTS ACT

BEN. AGRI. DEBTORS' ACT (1936), S. 34.

(1877, S. 13.

—S. 13 (2)—Order by District Court in work in Courts of Subordinate jurisdiction of latter.

Under S. 13 (1) of the Civil Courts Act, the Government fixes as well as alters the local limits of the jurisdiction of the Civil Courts. The local jurisdiction

DAS v. CHOGENULL

A.I.R. 1938 Cal. 402.

properties are situa

—S. 22—Order under S. 476, Cr. P. Power of latter to Judge.

An order of a Munsiff refo under S. 476, Cr. P. Code,

A.I.R. 1938 Cal. 362.

(Jack and L. GOPI NATH)

68

—S. 37—of Mahomedan Law.

stayed and Court. (A TORMULL

—S.

the meaning of Act when it of the Letters /.) SATISH TD

as a civil contract and the agreement to pay a certain amount of dower is a part of the contract of marriage, the mere principles of the Law of contract as embodied in the Indian Contract Act are insufficient of themselves to account for the main features of the law of dower.

—Ss. 34 and 40—Civil Court receiving notice—Jurisdiction to decide if debtor resides or property is situate within Board's jurisdiction.

On receipt of a notice under S. 34 of the Bengal Agri-

to not not after Court officer /.)

37= 176. m, if 19th.

administrative or judicial districts.

The areas mentioned in S. 1 (3) of the Bengal Agricultural Debtors' Act need not be administrative or judicial "districts". Under the Act, the Local Government can notify an area the entirety of which lies within

by the Civil Court receiving a notice under S. 34 of the Act from the Board. It is, at any rate, in the first instance, for the Board, subject to such right of appeal as the Act gives, to determine whether it can exercise jurisdiction over any particular applicant (Panchridge,

BEN. AGR. DEBTORS' ACT (1936), S. 34.

J.) NURSINGDAS TUNSOOKDAS v. CHOGENULL.

42 C.W.N. 293 = A.I.R. 1938 Cal. 402.

—S. 34—Court receiving notice under—If can go into question whether one is a debtor under the Act—Anomaly in construction.

It is not open to a Court to which notice under S. 34 of the Bengal Agricultural Debtors' Act is sent to decide or even consider whether the debtor comes within the Act or whether he does not, that question rests solely with the Board. Thus a Debt Settlement Board can hold up a suit started in the Court of the Subordinate Judge,

not have been realised or foreseen when the Act was drafted or passed (*Coitell, Ag. C. J. and Edgley, J.*) BHAGAWAN DAVAL v. CHANDULAL.

I.L.R. (1938) 1 Cal 256 = 174 I.C. 51 =

10 R.O. 612 = A.I.R. 1938 Cal. 23

—S. 34—Notice issued but not received by Court—Proceedings, if void.

The expression "give notice" implies not only the issue of notice but also the receipt of notice by the Court. Before the notice for stay is actually received by

—S. 34—Notice issued by Board before consideration of application under S. 12—If premature.

It is not necessary before the issue of the notice by the Board under S. 34 of the Bengal Agricultural Debtors' Act that a date and place for the consideration of the application by the debtor must be fixed under S. 12, or that notice of such date must be given to the parties and the parties heard (*M. C. Ghose and Biswas, J.J.*) JOGESH CHANDRA v. MAHES CHANDRA.

42 C.W.N. 1179 = A.I.R. 1938 Cal. 750.

—S. 34—Notice received by Civil Court—Its territorial jurisdiction not lying within any notified area—Duty to issue stay order.

all Civil Courts in Bengal are to treat the proceedings of such a Board in accordance with the provisions of the Act. Accordingly, a Civil Court in Bengal receiving a

SINGDAS TUNSOOKDAS v. CHOGENULL.

42 C.W.N. 293 = A.I.R. 1938 Cal. 402.

—Ss 34 and 20—Notice received by Insolvency Court—Power of latter to decide if insolvent as 'debtor'.

Under S. 20 of the Bengal Agricultural I if any question arises in connection with before a Board under this Act, whether a

BEN. AGR. DEBTORS' ACT (1936), S. 34.

debtor or not, the Board shall decide the matter and it would seem that such a decision must precede any notice issued under S. 34 of the Act. It is not for the Insolvency Court which receives the notice to decide, more especially without taking any evidence whatsoever, whether a person is or is not a debtor within the meaning of the Act. (*Bartley and Nasim Ali, J.J.*) SHIB DULAL v. KISHOREGANJ LOAN OFFICE, LTD.

176 I.C. 927 = 11 R.C. 191 =

42 C.W.N. 173 = A.I.R. 1938 Cal. 194.

—S. 34—Notice for stay—Powers of Civil Court.

fact or on a question of mixed law and fact within its jurisdiction as provided for by the Act, as (*e.g.*) that the debtor was a debtor within the meaning of the Act and that he ordinarily resided within its jurisdiction, the Court cannot sit in judgment over such decision and override it and then refuse to stay the proceedings in accordance with the notice. (*S.K. Ghose and Nasim Ali, J.J.*) HARISH CHANDRA PAL v. CHANDRA NATH SAHA.

I.L.R. (1938) 2 Cal 165 =

42 C.W.N. 411 = A.I.R. 1938 Cal. 369

a debtor or not, the Board shall decide the matter. This section was, of course, enacted in relation to the definition of 'debtor' under S. 2 of the Act. A Civil Court receiving notice for stay under S. 34 has, therefore, no jurisdiction to decide such a question. (*Henderson, J.*) BASIRUDDIN AHMED CHOWDHURY v. NOAKHALI SWADESHI STORE

66 O.L.J. 539.

—S. 34—Notice for stay in respect of joint debt—Power of Court to enquire if application to Board was valid.

A Civil Court on receipt of a notice under S. 34 of the Bengal Agricultural Debtors' Act in respect of a debt for which several persons are jointly liable, has no

jurisdiction to make to the regard to the the Civil Court settlement of and that such application actually includes a debt in respect of which a suit or other proceeding is pending before it, it has no option but to stay the suit or proceeding. (*Edgley, J.*)

—Exclusive jurisdiction of Board

After a petition has been filed purporting to be filed under S. 8 of the Bengal Agricultural Debtors' Act and before the events specified in S. 35 (a) and (b)

not

and

BEN. AGRI. DEBTORS' ACT (1936), S. 34.

(Amier Ali, J.) *BAIJNATH TAMAKUWALLA v. TOR-MULL*, 42 C.W.N. 481 = A.I.R. 1938 Cal. 549.

—S. 34—Question of rateable after sale—Proceedings, if must be

Once a sale has taken place, the debt has ceased to exist to the extent of the purchase price and therefore there is no proceeding pending with regard to that amount of the debt in the Civil Court and so at that stage the notice under S. 34, can have no effect. As between the sale and the confirmation thereof various kinds of proceedings may take place, but those will not be treated as proceedings under S. 34.

A.I.R. 1938 Cal. 549.

—S. 34—Receipt of notices for stay under S. 34—Civil court, if competent to decide whether debtor is a debtor or not.

In a proceeding with regard to the debt which has been included in the application under S. 8 or in the statement under sub S. (1) of S. 13 as the case may be, the civil Court has got no jurisdiction to decide the question whether the debtor is a debtor within the meaning of the Act. The Act has set up a special tribunal for the determination of the question whether the person is a debtor or not. It would be inconsistent with the provisions of the Act to allow the civil Court to do so. *Nasim Ali, J.* SARKAR.

42 C.W.N. 415 = A.I.R. 1938 Cal. 375.

—S. 34—Sale of entire mortgaged property in execution of decree—Decree-holder purchaser allowed set-off against portion of decretal debt—Notice received by Court before confirmation of sale—Proceedings, if should be stayed.

In execution of a mortgage decree the entire mortgaged property was sold for less than the amount and was purchased by the decree holder. Prayer for set-off was allowed and the decretal debt was reduced to the extent of the amount realised by the sale. After the sale had taken place and the Court confirmed the sale, notice under S. 34 was received by the Court. The Court refused to do so.

Held, that the debt to the extent to which it was satisfied by the aforesaid sale was not a debt. The entire mortgage was not a mortgage. There was no application under S. 34, R. 6, C. P. Code, made in this case for the Court to do, and that, therefore, the Court acted rightly in refusing the stay. (S. K. Ghose and Nasim Ali, J.J.) JATINDRA MOHAN MANDAL v. ELAHI BUX.

42 C.W.N. 530.

—S. 34—Sale in execution of decree—Purchase by decree holder for less than decretal amount—Notice received by Court before confirmation of sale—Proceedings, if should be stayed.

Where in execution of a decree the entire mortgaged property was sold for less than the decretal amount and was purchased by the decree holder, the civil Court is not bound to stay proceedings on receipt of a notice under S. 34.

BENG. ALLUVION AND DILUVION REG. (1825), S. 4.

—S. 4—Alluvion and diluvion—Notice received by Court before confirmation of sale—Proceedings, if should be stayed.

NATH v. DHANANJOY MONDAL, 178 I.O. 186 = 42 C.W.N. 218 = A.I.R. 1938 Cal. 261.

—S. 34—Sale in pursuance of money decree—Purchase by decree-holder for less than decretal amount—Notice received by Court before confirmation of sale—Jurisdiction to stay proceedings.

Where the judgement-debtor's properties were sold in

although the sale has not been confirmed. (*Bartley and Nasim Ali, J.J.*) JAGABANDHU ROY v. BHUSAI BEPARI, 178 I.O. 344 (1) = 42 C.W.N. 217 = A.I.R. 1938 Cal. 266.

no proceeding pending before the Court with regard to a debt which may form the subject of an application under S. 8 of the Bengal Agricultural Debtors' Act. Consequently, the Court is not bound to stay insolvency proceedings on receipt of a notice from the Board under S. 34 of that Act after the order of adjudication. (S. K. Ghose and Patterson, J.J.) SATISH CHANDRA v. NAGGAON UNION BANK, LTD. 42 C.W.N. 1216 = A.I.R. 1938 Cal. 753.

—S. 34—Notice received by Court before confirmation of sale—Proceedings, if should be stayed.

In order to obtain a stay order of the nature contemplated by S. 34, Bengal Agricultural Debtors' Act, the Act must be in operation both in the district in which the Board is situated to which an application is made for the settlement of a debt and also in the district in which the property is situated.

—S. 115—High Court's power of revision—C. P. Code, S. 115.

—S. 115—High Court's power of revision—C. P. Code, S. 115. *Debtor's All, although such officer is a plaintiff.* (S. A. Ghose and Edgley, J.J.) RAM KRISHNA SIKUL v. ALI NEWAI, 178 I.O. 172 = 42 C.W.N. 892 = A.I.R. 1938 Cal. 688.

BENGAL ALLUVION AND DILUVION REGULATION (XI OF 1825), S. 4 (5)—Applicability—Alluvion and diluvion—Several estates—Notice received by Court before confirmation of sale—Proceedings, if should be stayed.

Where in execution of a decree the entire mortgaged property was sold for less than the decretal amount and was purchased by the decree holder, the civil Court is not bound to stay proceedings on receipt of a notice under S. 34. The provisions of the Bengal Alluvion and Diluvion Regulation (XI of 1825), S. 4 (5) are not applicable to the case of alluvion and diluvion. The provisions of the Bengal Alluvion and Diluvion Regulation (XI of 1825), S. 4 (5) are not applicable to the case of alluvion and diluvion. The provisions of the Bengal Alluvion and Diluvion Regulation (XI of 1825), S. 4 (5) are not applicable to the case of alluvion and diluvion.

BENGAL CESS ACT (1880), S. 4.

of local usage and failing that, by general principles of equity and justice. It would not be proper to lay down any hard and fast rule on the point. The general principle underlying an apportionment should be to secure to each riparian owner a portion of the new waterline

selling goods in hats—Assessment to cess

Where the vendors attending the *hats* do not sit in any particular place and tolls or fees are realised by the plaintiff on the quantity and quality of articles actually sold and no fee is payable if there is no sale, and fees

selling their goods in the *hats* and does not therefore represent the "annual value of land" as defined in S. 4 of the Cess Act. Consequently an assessment to cess under Chapter II of the Act on the basis of such income is illegal and *ultra vires*. (*Mitter and Bhowmik v. Secretary of State v. Hingul Kuma*)

42 C.W.N. 189 = 1

—Ss. 5 and 6—Scope and effect of.

that notice was in proper form—Non production of copy—Effect.

Where there is the finding of service of notice under S. 54, the Court is entitled to presume unless the contrary is shown that this referred to service of a notice framed in accordance with law. The mere non-production of a copy of the notice cannot be regarded as in any way militating against the presumption of correctness of form. (*Biswas, J.*) **KAMAL KRISHNA v. SARAT KUMAR ROY**

A.I.R. 1938 Cal. 145.

—S 56—Liability to cess—Issue of notices under Ss 52 and 54—If a condition precedent

It is clear on the wording of S 56 that the liability of any owner or holder of *rent free lands* to pay any cess to the owner of any *estata* cannot arise unless there has been both the notices under Ss. 52 notices is indeed a condition such liability. (*Biswas, J.*) **SARAT KUMAR ROY.**

A.I.R. 1938 Cal. 145

—S 64-A—Scope of—*Niskar* lands in separate

but the co-sharers are each in separate possession of specified quantity of land within the *niskar*, either in *khas* or through tenants, each such co-sharer will be liable in respect of the land held or owned by him, and the principle of joint and several liability embodied in S. 64 A cannot be extended to make a co-sharer in possession of a separate piece of land liable for the lands separately held by another co-sharer. (*Biswas, J.*)

BENGAL COURT OF WARDS ACT (1879), S. 7. KAMAL KRISHNA v. SARAT KUMAR ROY.

A.I.R. 1938 Cal. 145.

—S. 93—Scope—Jurisdiction of Civil Court—Suit questioning valuation by cess department on ground that it is wrong—Bar of.

The Civil Court has jurisdiction to grant relief in a *nent* has acted *ultra vires* and income which is not subject Act is no bar to such a suit, a suit to establish that the son has been assessed is not as it does bar a suit in which the cess department has acted that its decision is wrong

(*J.*) **BRAJA BEHARI DASS v.**

17 Pat. 436 = 4 B.R. 476 =

17 P. 547 = 1938 P.W.N. 459 =

174 I.C. 752 = 11 P.L.T. 352 =

A.I.R. 1938 Pat. 362.

—Sch D—Words 'his' and 'his lands'—Meaning of.

The word 'his' in Sch. D means 'belonging to' and words 'his owners and holders' means, (*J.*) **KAMAL**

A.I.R. 1938 Cal. 145.

BENGAL CHILDREN ACT, S. 40—Custody—Meaning of.

The question whether a person has the custody of another within the meaning of S. 40 of the Bengal

COURT OF WARDS ACT (IX OF 1879)

—Proprietor of an estate—Executrix and tenant for life under a will—If a proprietor.

Where a Hindu testator had bequeathed a *life estate* in all his properties to his wife and also appointed her as an executrix, the widow after the death of the testator is the 'proprietor of the estate' within the meaning of S. 6 of the Bengal Court of Wards Act (*Panchridge, J.*) **INDUMATI DEBI v. BENGAL COURT OF WARDS.**

I.L.R. (1938) 1 Cal. 478 = 42 C.W.N. 230 =

A.I.R. 1938 Cal. 385.

—S 6 (a)—Declaration by Court of Wards under—If a Judicial act—Notice to persons affected—Necessity.

In making a declaration that a person is a disqualified person under S. 6 (a) of the Act, the Court is

A.I.R. 1938 Cal. 385.

—S. 6 (a)—Declaration under—If a matter conversant under S. 226 (1) of Government of India Act, S. 226

I.L.R. (1938) 1 Cal. 476 =

A.I.R. 1938 Cal. 385 = 42 C.W.N. 230.

—7—Taking charge of property—Facts to be considered prior to—Opportunity to person affected to show competency to manage.

Before the Court of Wards can take charge of the property of a person under S. 7 of the Act, after a declaration of the incompetency of the proprietor to manage it, the Court of Wards must consider whether there exist materials to warrant such a declaration. Principles of natural justice require that the proprietor should have an opportunity of testing those materi

BENGAL ESTATES PARTITION ACT (1897), BENG. LAND REGN. ACT (1876), S. 57.

S 99

rest of tins

set aside the order of forfeiture in respect of 13 tins. He then ordered that samples should be taken from them and sent to the Public Analyst after which those found to be adulterated ghee would be destroyed.

Held, that the defendants, having got the advantage of an enhanced asset and having allowed that basis, could not

he accused adulterated under in Act and t, directing fested. On viction but

Held, that when the Sessions Judge set aside the

tins of ghee, he should the tins to the accused, I LAL v. CHAIRMAN,

ASANSOL MUNICIPALITY.

42 C.W.N. 731.

—S. 14 (2)—*Analysis of food sent for analysis before case—Costs of analysis—Power of Court to order*

—S 99—*Applicability—Lessee admitted shares—Possession for over 12 years continuous—Right of other co-sharers to eject.*

In applying the provisions of S. 99 of the Estates Partition Act, a distinction must be between occupancy rights which are the creation of the rights of a lessee or a tenure holder the result of a contract between a co-sharer person in possession. It is doubtful if after occupancy rights have accrued by 12 years continuous possession, any other co-sharer would be entitled to eject the raiyat or lessee under the provisions of S. 99. (*Courtney Terrell, C J and James, J*) RAJA RAM RAI v. NIKANJAN RAI 17 Pat 143—1938 P.W.N 371—19 Pat.L.T 387—175 IC 943—11 RP 35—4 BR 658—AIR 1938 Pat 297

BENGAL EXCISE ACT (V OF 1919), Ss 46 and 62—*Accused charged under S 46 having connection—Summons case procedure—Legality*

Where the accused who is charged with under S 46 of the Bengal Excise Act is hanced punishment under S. 62 of that Act by reason

Court. In such a case, therefore, the Court cannot order for payment of the costs of analysis under S. 14 (2) of the Act. (*Patterson, J.*) ATUL CHANDRA MODAK v. EMPEROR 42 C.W.N. 760.

BENGAL LANDLORD AND TENANT PROCEEDURE ACT (VIII OF 1869)—*Agricultural lease—Forfeiture clause—Validity—Termination of lease on forfeiture—Form of notice*

Act VIII of 1869 leaves landlords and agricultural

contract There cannot be a contract invalid a

It cannot be ailed of by the landlord, in spite of a contract to the contrary contained

mons case procedure instead of the procedure for a warrant case is not a mere matter of form and would not be cured by S 537, Cr. P Code (*Biswas, J*) SUFAL GOLUI v. EMPEROR 42 W.N. 222—174 IC 454—10 RC 674—39 Or L.J. 438—AIR 1938 Cal. 205.

If the landlord intimates to the tenant before suit his election to determine the lease, there is a valid termination of the lease (*Mitter and Biswas, JJ*) PRAYAT CHANDRA SYAM v. BENGAL CENTRAL BANK, LTD. I.L.R. (1938) 2 Cal 434—42 W.N. 761—AIR 1938 Cal 589.

in such a case under S. 50 (1) of the Bengal Food Adulteration Act the Magistrate acquitted the accused and directed the return of the tins of mustard oil to him, and the order of acquittal from, the Sessions Judge cannot, the basis that the order of acquittal the forfeiture of the tins in case he analyst is against the accused (*bridge, JJ.*) KISHAN LAL v. SASHI BHUSAN 42 C.W.N. 220

—S. 13 (2)—*Some out of several tins seized from accused found to contain adulterated ghee—Order of forfeiture in respect of all tins—Appellate Court setting*

Y. D. 1938—6

possession of certain lands on the ground that they were purchased by him out of his own funds. The plaintiff and the defendant were members of a Maho family. The lands were mutated in the plaintiff alone. The defendant contended that he got

BENG. LAND REV. ASSESS. REGL. (1828), S. 13 | BENG. LAND REV. SALES ACT (1859), S. 5.

68 CLJ 455—

**BENGAL LAND REVENUE
(RESUMED) REGULATION**

—Government granting lands
Government of a 'landlord'—*E*
'revenue', if only 'rent'—Grant
ment of rent in case of dilution—

By the force of S. 13 of the R
alone, the state does not become a landlord

'landlord'
described
to mean
grantee can
the B. T.
being dila
BASHINI C

—S. 13—Grant of waste land in Sunderbans to
lordar under Waste Land Rules—Effect of—Part of
grant dilapidated—Claim for abatement under S. 52,
B. T. Act—If sustainable.

In the said section is the right of property in Sovereign

executors and assigns. It gave the grantee a right to
engage with Government on conditions applicable to
owners of temporarily granted estates. The grant was

Government demand, which was termed 'revenue' on
the results of the said measurements was to be the only
adjustment during the currency of the term of 99 years.
The grant was included in the Register A maintained
under the Land Registration Act as Tauli. The lordar
claimed abatement of the amount payable by him to the

STATE,
Cal. 229.
AOT (XI
y—Raiyati
of, for

vernment khar mahal can
revenue under the same
1859. (S. K. Ghose and
ESLAM v. ANIMESH
43 O.W.N. 46.
January and 28th March
dates in each year for

payment of arrears of land revenue—Sum demanded as
payable in respect of January but not paid before 12th
January—Sale held after 12th January—Validity.
The expression 'kist', as explained in the Tauli
Act, is not limited by the period of 12 months.

revenue, 12th January and 28th March in each year as

section 11 attracted, is a sale contrary to the Act and
such sale cannot be challenged on that ground in a Civil
Court, unless such a ground had been specified in an
appeal made to the Commissioner. (R. C. Mitter, J.)
SUBODHBALA GHOSH v. HARENDRA NATH DAI.

A.I.R. 1938 Cal. 584.

BENG. LAND REV. SALES ACT (1859), S

—Ss 6 and 14—Payment in respect of account after latest day of payment—Effect under S. 14.

The provisions of the last paragraph of S. 6 of the Act are attracted to sales not only of the entire estate, but also of shares of estate. The payment by the defaulting proprietor of the arrears due in respect of a separate account after the latest day

42 O.W.N. 1203

—S. 8—Revenue received by Collector by money order on last date—Money not credited to intended taluk owing to mistake in description of taluk—Sale of taluk—If void.

A Collector received the revenue by money order on the last date for payment of revenue. This money could not be credited to the account of the intended taluk on account of mistake in the description of the taluk.

Conclusion for crediting the same in respect of the defaulting taluk. The sale therefore could not be said to have been without jurisdiction. (*Bartley and Nasim Ali, JJ.*) SAYED AHAMUD v. SANSUDDIN AHAMED.

175 I.O. 745=11 B.O. 6=A.I.R. 1938 Cal. 275.

—Ss 13 and 14—Sale of separate account—Proceeds insufficient to liquidate arrears—Other separate accounts also in arrears—Power of Collector to order sale of entire estate before putting them to sale.

If a separate account in arrears is put up to sale and the sale proceeds do not satisfy the arrears due thereon, S. 14 applies.

them to sale as the sale proceeds, if any, of those accounts could not be utilised to wipe off the arrears or the balance of arrears due on the separate account first exposed to sale. (*Nasim Ali and Henderson, JJ.*) NIRMAL NALINI DASI v. HARSAMUKHI DASI.

I.L.R. (1938) 2 Cal 549=42 O.W.N. 1203.

—S. 14—Declaration under—Neglect of other proprietors to purchase share in default—Effect of.

The effect of a declaration under S. 14 followed by the neglect of the other recorded proprietors to purchase the share in default by paying the respect thereof is that the separate

On the closing of the separate accounts, a general account of the receipts of revenue in respect of the entire estate must be made and if on such account being made, there appears an arrear of the revenue, the entire estate must be notified for sale. (*R. C. Mitter, J.*) SUBODHBALA GHOSH v. HARENDRA NATH DAI.

A.I.R. 1938 C.

—Ss 31 and 13—Sale proceeds of one account—If can be appropriated towards arrears from other separate account.

The proceeds of sale of one account cannot be appropriated towards the arrears due from that account under S. 13 of the Act can the arrears due from that account be set off against the arrears due from other

BENG. LAND REV. SALES ACT (1859), S

—S. 33—Appeal to Commissioner not presented in time—Suit in Civil Court on ground that sale was contrary to Act—Maintainability.

The appeal contemplated in S. 33, Bengal Land Revenue Sales Act, is an appeal made to the Commissioner of Revenue, established in 1868, that is, an appeal to the Commissioner of Revenue presented to him within 60 days of the sale for transmission to the Commissioner.

An appeal not so presented is to be treated as no appeal and no attack can be launched on the sale in a suit on the ground that the sale was contrary to the provisions of the Act, the estate being admittedly in arrears. (*R. C. Mitter, J.*) SUBODHBALA GHOSH v. HARENDRA NATH DAI. A.I.R. 1938 Cal 584.

—S. 33—Revenue sale—Setting aside—Money paid to credit of estate—Misdescription of taluk—Effect of.

When a revenue sale is set aside on the ground of misdescription of the taluk, the money paid to the credit of the estate is to be treated as nullity and the taluk is to be sold afresh. When a revenue sale is set aside on the ground of misdescription of the taluk, the money paid to the credit of the estate is to be treated as nullity and the taluk is to be sold afresh.

entries were made by the Collectorate officers to which the proprietor was not a party. When however there is a misdescription of the taluk and it is not undisputed that money has been placed to the credit of a particular estate, different considerations arise. The Collector may in such cases justly hesitate to credit the amount to one estate rather than to the other. The rules framed by the Revenue Department make detailed provisions, as to the duties of the Collectorate officers who are entrusted with the charge of receiving these payments in such cases. Where there is a violation of these rules by

MANODA MOHINI

DAS v. SAKINA BIBI.

43 O.W.N. 48=

A.I.R. 1938 Cal. 738.

—S. 34—Sale of holding for arrears of revenue—Title suit by owner against purchaser—Sale set aside on compromise—Compromise decree not executed within six months—Effect on sale.

A riyat holding in a Government *khaj* mahal was sold for arrears of revenue under Act XI of 1859. The owner, after an unsuccessful appeal to the Commissioner,

decree. According to the terms of compromise, the revenue sale was set aside on the ground that the Collector had no jurisdiction to sell a *riyat* holding under the Act.

Held, that there was no judicial determination of the

BENG. LAND REV. SALES ACT (1859), S. 37.

—S. 37—Occupancy holding at fixed rate of rent—Mokarari right created subsequent to Permanent Settlement—Right of purchaser to enhance rent.

Rajats having a right of occupancy at a fixed rate of rent are not liable to be ejected under S. 37 of the Revenue Sale Laws (Act XI of 1859). But if their mokarari right was created subsequent to the Permanent Settlement, the purchasers at the revenue sale are entitled to treat them as occupancy rajats whose rents are liable to enhancement according to law. (*Al. C. Ghose, J.*) **JANAKI NATH DE SARKAR v. RAJANI NATH KAR.**

67 C.L.J. 470

—S. 37, Excep. 2—'Settlement'—Meaning of—Settlement of estate for term and resettlement after expiry of term—Tenure created by settlement-holder before resettlement—If protected from annulment.

The word 'settlement' in the second exception to S. 37 of Act XI of 1859 means the settlement of the estate. Where an estate was settled by the Government for a term of 40 years with the option of resettlement for a period of 30 years after the expiry of that term, and the settlement holder created a tenure and after the

settlement, and that as the tenure was not in existence at the time of the original settlement, it was not protected from annulment after the revenue sale under the second exception to S. 37 of the Act. (*S. K. Ghose and Edgley, J.J.*) **NILIMA PROVA NANTOSH.**

BENGAL LAND REVENUE REGULATION (VII OF 1822)

Summary settlements as such enforce up to Rs. 500 of settlements for colonisation are not binding Government unless and until confirmed by the Revenue. The acceptance of a kaboliyat

BENGAL LOCAL SELF-GOVERNMENT ACT (III OF 1885)—District Board—Lease b. Lease contravening R. 95 of Rules pub. Government.

A lease for 15 years granted by the I without the previous sanction of the Divisioner contravenes the provisions of R. 95 published under the statutory authority of Government and is, therefore, *ultra vires*. (*J.*) **AMLOK CHAND RAFARIA v. KESH**

—S. 148—Order of authority after election disputes under S. 138 (a)—In revision.

S. 148 of the Local Self Government Act precludes interference by High Court by way of revision with any order made by the authority lawfully appointed to decide disputes relating to elections under S. 138 (*Bastley and Nazim Ali, J.J.*) **PIAL SARKAR v. MAULVI DEBAR HUSSAIN F**

BENG. MUNICIPAL ACT (1884), S. 535.

HURY.

174 I.C. 879 = 10 B.D. 738 =

42 C.W.N. 283 = A.I.R. 1938 Cal. 240.

—S. 148—Order of District Magistrate on petition under Rule 1 (A) of Election Rules—Revision, if lies—C. P. Code, S. 115.

An application in revision under S. 115, C. P. Code, does not lie to the High Court from an order passed by the District Magistrate on a petition filed under Rule 1 (A) of the Election Rules. (*S. K. Ghose and Nazim Ali, J.J.*) **TARA PRASAD SUKUL v. ABUL KASAM KHUNDKAR.**

42 C.W.N. 441 =

A.I.R. 1938 Cal. 359.

BENGAL MONEY-LENDERS' ACT (VII OF 1933), S. 4—Applicability—Pending suits.

S. 4 of the Bengal Money Lenders' Act does not apply to suits instituted before the commencement of that Act. (*Nazim Ali and Henderson, J.J.*) **HARI MOHAN GOVINDA CHANDRA DAS v. AMRITLAL CHOWDHURY.**

42 B.W.N. 975 = A.I.R. 1938 Cal. 665.

BENGAL MUNICIPAL ACT (III OF 1884), S. 16—Frame of suit.

The fact that a suit is filed against the Chairman of

MUNICIPALITY. 33 C.L.J. 267 = 42 C.W.N. 768.

—(XV OF 1932), Ss. 89 B and 43—Order deciding application under S. 36—Revision—Power of

A.I.R. 1938 Cal. 466.

and 43—Order of District Judge on

filed, under S. 36—Power of High

Government of India Act, S. 224,

and provisions of Ss. 39-B and 43 of the Bengal

(*J.J.*) **BAN BIHARI MUKHERJEE v. MAKHAN LAL**

to apply only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the

BENG. MUNICIPAL ACT (1884), S. 535.

for a declaration combined with a suit for confirmation of possession and injunction. (*fact, J.*) **BIDHU BHUSAN MAJUMDAR v. COMMISSIONERS OF THE BARANAGORE MUNICIPALITY.** 42 O.W.N. 467.

—S. 535—*Suit for illegal omission of Municipal Act—Notice, if necessary.*

The words "for any act purporting to be done under this Act" in S. 535 of the Bengal Municipal Act include an illegal omission. Consequently a suit for a non-feasance or illegal omission of the Municipality would be bad if the notice required by the section is not given.

AGRA AND ASSAM CIVIL COURTS ACT.**BENGAL OPIUM SMOKING ACT (X OF 1932), S. 8—Presumption under—When arises.**

The fact that the accused and two other persons were sitting in a room together and that one of them was smoking a preparation of opium, establishes the presumption referred to in S. 8 of the Bengal Opium Smok-

BENGAL TENANCY ACT (1885), S. 3.

v. Atkinson, founded on the creation of a trust, and that the certificate-officer being a nominee or trustee of the District Board, the Board was entitled to sue upon the contract. (*Henderson and Birwa, J.J.*) **MALDA DISTRICT BOARD v. CHANDRA KETU NARAYAN SINGH.** I.L.R. (1937) 2 Cal. 698—66 C.L.J. 373.

BENGAL PUBLIC GAMBLING ACT (II OF 1867), S. 11—Counterfoil receipts bearing names of horses—If instruments of gaming.

It is doubtful whether the view that counterfoil receipts bearing names of horses are found in the entries of gaming is counterfoils was evidence as to what the accused was doing at the time of arrest.

(*Patterson, J.*) **AMULYA DHONE GHOSE v. RAM SUNDAR SINGH.** 175 I.C. 446—10 E.C. 803—A.I.R. 1938 Cal. 422.

S. 11—Possession of racing guides and notes on horses—Inference from.

Having racing guides and notes on horses does not establish that the accused were taking up for men to possess specially when they attend the races. **IMAR MUKHERJEE** I.R. 1938 Cal. 713, 859—*Applicability*

—*late non agricultural*

usual in character, have no application. (*J.*) **PRASANNADEB**

A.I.R. 1938 Cal. 866. *rounds—Contents of*

An under tenant holder is liable to pay enhanced

BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT (XII OF 1932), Ss 36 and 38—Scope and effect.

lished that a person has in his possession any document of the nature defined in S. 36, that person is liable to

The question whether a Bargadar is a tenant or not is a question to be decided in each case. Certain l

lar case facts of Subse-

barred by any other principle. Held, further, that case came within the well-recognised exception to the general as laid down in *Tweddle*

BENGAL TENANCY ACT (1885), S. 4.

quently *A* and his co-sharers transf interest to *B* and obtained from him by which *A* agreed to cultivate the produce to *B*. *B* brought a suit period subsequent to the year 1929.

Held, that on facts as well as accor ment of S. 3 (17) which applied to the

NATH SARKAR.

A I.R. 1938 Cal 707.

—S. 4—Under-raiyat—Status of—Power to sub-lease—Purchaser of under-sub lessee.

Under S. 4 of the E tenant. He may either a raiyat or under an under a trespasser but a tenant having the status of an under-raiyat. S. 4(3) gives an indication that under-raiyats have power to sub-let their under-raiyats the sub lessees are tenants. Where such a sub-lessee acquired a right of occupancy to the land by a custom, he could not be ejected by a purchaser of under raiyats at a sale in execution. (*Nasim Ali Rem MIT*)

—S. 5 (4)—Status of lessee—Raiyat or tenure—

THAKUR V. GANESH PRASAD.

175 I.C. 501—4 B.R. 592—10 R.P. 633

A I.R. 1938 Pat. 23

—S. 5 (5)—100 standard bighas—If must

—S. 22 (2)—Co-sharer landlord purchasing hold-

the proper methods to apply. (*R. C. Mitter, J*) BREE-
MANTA NARAYAN SARKAR v. MAHARAJA SRISH
CHANDRA NANDI. 68 C.L.J. 120.

—S. 7—Enhancement of rent of tenures.

BENGAL TENANCY ACT (1885), S. 7.

—S. 7 (2)—Landlord adducing evidence to show absence of customary rent—Tenant not rebutting this evidence—Enhancement of rent—Power of Court.

In a suit for enhancement of rent the landlord in his plaint expressly stated that there was no customary rent in the locality and adduced evidence for the purpose of

to be established that there was no customary rate of rent in the locality and as such the Court was at liberty

(1)—“Proprietor”.
proprietor’ in sub-s. (1) of S. 22 includes
of a temporarily settled estate (*R.C.*
Mitter and Sen, J.J.) MIDNAPORE ZAMINDARY CO.
43 C.W.N. 57—
A.I.R. 1938 Cal. 804.

—Acquisition by holding by
the B. T. Act
128, should be

22(2)—Co-sharer landlord purchasing hold-
cution of rent decree—Position of.

S. 22 (2), a purchase by co-sharer landlord in
even of a decree which has the effect of a
decree may be deemed to extinguish the tenancy

—Ss. 22 (5)—Construction of Kabuliya—Farm-
ing lease.

A.I.R. 1938 Cal. 452.

BENGAL TENANCY ACT (1885), S. 22.

A company obtained a settlement from Government of a *Maar mahal*. The company recognised the Government as a proprietor. The settlement was described as farmer. The settlement, the payable to make to the Government and it was further provided that in case of default in payment the Government had right to cancel the lease and to realize its dues by the procedure under Public Demands Recovery Act.

Held, that the use of the word 'revenue' and the provision for realization of dues by procedure under the Public Demands Recovery Act did not signify that the relationship of landlord and tenant was not being created by the settlement. Under the settlement the company

BENGAL TENANCY ACT (1885), S. 26-F.

decree in favour of his son were recited and stated to have been satisfied but the amount due on the mortgage

(*Bartley and Naim Ali, J.J.*) **KUNJA KAMINI v. MANGAL CHANDRA.** I.L.R. (1938) 1 Cal. 695 = 42 C.W.N. 209.

—S. 26-E (1)—Sale of tenure and occupancy holding together—Landlord's fees so far as tenure deposited—Sale of tenure confirmed and that of occupancy field set aside—Validity.

In execution of a mortgage decree, A purchased and obtained possession of a tenure and an occupancy field

Purchase by *ijadar* of occupancy holding—Effect of.

from acquiring occupancy right by purchase in the land of his *ijara*, but it did not debar acquiring a non occupancy ryoti interest. That if an *ijadar* purchases an occupancy

therefore A

S. 23—Tenancy for horticultural

Structures erected by tenant—Suit for injunction by landlord dismissed as time barred—Structures subsequently destroyed by fire—Transferee from tenant erecting fresh structure on same site—Landlord, if can bring fresh suit *See* LIMITATION ACT, S. 28

eng—
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Treasury until the next day owing to the rules of procedure, the Court cannot reject the application as time-barred. (*Henderson, J.*) **MANILAL PAL v. GUNDA**

BENGAL TENANCY ACT (1885), S. 26-F.

debtor entered into a compromise holder agreed to discharge the entire liability under the decree-holder was thereupon

On application by the

sold and not the entire decretal amount. (*Asim Ali, J.*) CHAND MIA v. MAHARAJA BIR VIKRAMKISHORE MANIKYA BAHADUR 42 C.W.N. 614

—S. 26-F—Instrument of transfer stating sale price as Rs. 200—Notice under S. 26-C also stating same amount—Recital in body of instrument that certain mortgage debts were satisfied—debts not stated—Amount to be deposited pre-emption.

Where the instrument of transfer issued by the landlord under S. 26-C of the B. T. Act stated the sale price as Rs. 200 and in the body of the instrument one mortgage in favour of the transferee and another mortgage decree in favour of his son were recited and stated to have been satisfied but the amount due on them was not mentioned and it appeared that

lord was not bound to deposit for pre-emption anything more than what was stated in the instrument of transfer

—S. 26-F—Proceeding under—Minor party—Compromise entered into by guardian—Sanction of Court—If necessary—Order of Court—If can be challenged by suit—C. P. Code, O. 32, R. 7.

By virtue of S. 141, C. P. Code, O. 32, R. 7 of the Code applies to proceedings under S. 26-F of the Tenancy Act and express sanction must

BENGAL TENANCY ACT (1885), S. 26-J.

appellant guardian. MA DASI. Cal. 738. Application regarding ge, disallowed by

of the B. T. Act he holding which and by the lower on will not interfere. KALI MOHAN

67 C.L.J. 5. 20-2—Right of pre-emption—Applicant, if must be immediate landlord at time of order.

The right of pre-emption under S. 26-F of the B. T. Act depends upon the applicant being an immediate landlord of the holding not only at the time he makes his application but also at the time when an order for *Henderson, v. JITEN, N. 582 = C. 181 = Cal. 351,*

—S. 26-F—Sale of property in two lots—Landlord's right to pre-empt one of them.

Where property was sold in two lots in execution of a money decree, the landlord seeking to pre-empt under S. 26-F of the B. T. Act cannot be allowed to must pre-empt both the be refused. (*S. K. Ghose, UKMINI KANTA BARMAN* 42 C.W.N. 288.

—S. 26-F (3)

If entitled to be a

A transferee of

mortgagee of that

(3) of the B. T.

—S. 26-J—Application under—Decision, if res judicata.

Under S. 11, C. P. Code, no question of *res judicata* arises unless there has been a suit. There can be no question of *res judicata* in connexion with summary

BENGAL TENANCY ACT (1885), S. 26-J.

balance of the transfer fee should not be by means of a suit. The section itself does not indicate whether recovery is to be by means of an application or by

—S. 26-J—*Proceeding under—Decision as to nature of tenancy—Whether res judicata.*

is due from the transferee. The question of the status of the tenancy is not merely incidental, ancillary, or subsidiary. It is a matter which is directly in question between the parties. Consequently the decision of that question by the Court in a proceeding before it, operates as *res judicata*, in a subsequent suit between the same parties instituted in a Court of concurrent jurisdiction. The fact that in the prior proceeding the High Court in revision has expressed an opinion as to the right of the unsuccessful party to institute a suit cannot in law prevent the application of the doctrine of *res judicata*. (*Costello and Panckridge, Jf.*) KRISHNA CHANDRA I.L.E. (1938) 2 Cal 418—67 O.L.J. 363—42 C.W.N. 793.

—S. 29—*Claim of excess rent—Burden of proof.*
Proviso (1) to S. 29 only dispenses with the necessity of a contract being in writing and registered but does not affect Cls. (b) and (c) of S. 29. Although S. 29 has no application where there are excess lands which are added to the original holding and a consolidated rent is assessed upon the whole, still it is incumbent on the Court to

provement not registered—Landlord's right to enhanced

BENGAL TENANCY ACT (1885), S. 44.

—Ss. 30-B and 52—*Decree against recorded tenant—Unrecognised transferee of occupancy holding—If can sue to set aside decree.*

The unrecognised transferee of a portion of an occupancy has undoubtedly a right to get a decree against the recorded tenant set aside on the ground that the decree is wrong in law and should not have been passed having regard to the evidence that was which were hereto, J.)

—S. 38—*Benefit of section.*

S. 38 of the B. T. Act applies only to an occupancy raiyat, and a tenant cannot invoke it to his aid unless it is clearly established by him that he is a tenant. the benefit J.) SOA LAL.

—S. 38—*Right to abatement—"Deterioration"—Nature of—Omission of landlord to keep irrigation system in order—Effect—Right of tenant to abatement in suit for rent—Pleadings.*

The deterioration contemplated by S. 38 of the B. T. Act is a deterioration of the soil which must be more or less of a permanent character, namely, by a deposit of sand or other specific causes, sudden or gradual. Where the productive capacity of the land depends on irrigation, the mere fact that for want of irrigation the land does not yield as much produce as it did before cannot amount to a permanent deterioration of the soil so as to entitle the tenant to an abatement of rent. If, however,

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BENGAL TENANCY ACT (1885), S. 48.

—S 48 (as amended in 1928)—*Applicability—Rent claimed for period after new Act came into force.*

Where the period for which the rent is claimed is after the new Act came into the parties must be governed by S. the bar which was imposed by the been removed. (*Nasim Ali and Mukherjee, JJ.*)

contravention of S. 43 II of the B. T. Act, the lease itself would be void as against the superior landlord. But the section does not say that the lease is void as against the landlord for the unpaid rent. (*Ali, JJ.*) HAREND SANA 174 I.C. 972

—S. 50—*Pre*

Amalgamation of holdings.

The presumption arising under S. 50 of the B. T. Act is not affected by the fact of amalgamation of separate holdings into one. (*Edgley, J.*) LILABATI DAS v. GHITPUR GOLABARI CO., LTD. 42 C.W.N. 637 = A.I.R. 1938 Cal. 481.

—S 50—*Presumption under—Right to—Plaintiff entering possession of holding by virtue of purchase—Landlord not recognising purchase and not taking rent from plaintiff—Right of latter to tack on his period of possession to that of his vendor*

The plaintiff came into possession of the disputed

that during the period of possession of the plaintiff's vendor within the 20 years immediately before the institution of the suit by the plaintiff under S. 106 of the B. T. Act, the rate of rent in respect of the holding

BENGAL TENANCY ACT (1885), S. 52.

of a case. (*Guha and Mitter, JJ.*) PRODYOT KUMAR v. RADHAKISHEN. 42 C.W.N. 304.

—S 52—*A statement of rent—Grant of Sander-III of 1828—If VENUE ASSES-OF 1828). S. 13. 42 C.W.N. 239.*

to maintain the possession of the tenant against all law-ful evictions. The landlord's duty does not extend to

principal of the whatsoever claim abatement of rent. (*R. C. Mitter, J.*) SURENDRA NATH MONDAL v. BHUDAR CHANDRA SAFUIX. 177 I.C. 896 =

67 C.L.J. 136 = A.I.R. 1938 Cal. 690.

—S 52—*Claim for additional rent for additional area based both on kabulyat and section—Landlord omitting to make measurement as provided for in kabulyat—Claim, if barred.*

A claim for additional rent in respect of additional area based not only on the terms of the kabulyat but upon the express provision of S. 52 of the B. T. Act, is not time barred simply because the landlord omitted to make the measurement which was provided for in the

under S. 52 of the Act is a (*Mukherjee, J.*) KEDAR NATH BOSE 42 C.W.N. 994.

for rent for additional area—

of additional d of measure- ing out of the added by the tenant. (*Mukherjee, J.*) KEDAR NATH BOSE v. ENANDI MONDAL. 42 C.W.N. 994.

—S 52—*Excess area within boundaries described in kabulyat—Landlord's right to additional rent*

landlord was therefore entitled to get additional rent for excess area if there be any, within the original boundaries. (*S. K. Ghose and Nasim Ali, JJ.*) NANDA KISHORE LAL v. KHETABUDDIN AHMED. 177 I.C. 670 = 11 E.O. 265 = A.I.R. 1938 Cal. 449.

Even in suits which are not under the B. T. Act, the principle of S. 50 of the Act is a useful guide to the Courts in determining the nature of a tenancy, and a presumption similar to the one arising under the section may be accepted along with the other facts and circumstances

BENGAL TENANCY ACT (1885), S. 52.—S 52—*Scope and applicability—Test.*

What S 52 of the B. T. Act requires to be proved by measurement, is the quantity of land held by the tenant at the time of the settlement, as the old area as well as the new area—before, but was then or assumed, for or with reference to which the rent had been assessed. It is not necessary therefore, that the subsequent measurement must represent a real increase of area—what the section requires to be shown is land held in excess, and such excess established even within the limits of the original settlement, provided of course it is shown that the settlement was on the basis of the supposed area. On the other hand, it may happen in a particular case at the time of the assessment of the previous area was actually ascertained and specified in the *patta* or *kabuliyat*, but the settlement was still not on the basis of the area, the rent being fixed as a sum for the entire holding, there will be no "excess" area in such a case for which rent would be payable under the section, merely because a subsequent measurement shows the tenant to be holding a larger area. In other words, S. 52 may not apply even when there is a real increase of area. (*Biswas, J.*)

BENGAL TENANCY ACT (1885), S. 104.

ment for the use of the land. If the amount has been definitely agreed upon that is the actual rent payable.

tenant to erect building.

The only effect of the amendment of S. 76 (2) (f) is

—S. 103-B—*Presumption under—Extent of.*

raise a presumption in favour of the recorded holder of his possession at some earlier date. A I R 1934 Cal. 707, Foll. (*McNair, J.*) BEROJULLAH SARKAR v. AYATULLAH AKAND. 178 I O 708—11 B O. 169—80 C L J. 465—A I R 1938 Cal. 117.

—S 104—*Assessment of land added to an estate paying revenue—Complaint of wrong inclusion of land in Diara estate—Omission to file suit—Effect of—Bengal Act (IX of 1937)*

(1) of the B. T. Act. (*Miller and Biswas, J.J.*)

mary rent and actual rent—*Close to sum in excess of actual rent—Maintainability.*

The rent of a holding is that which is paid by a tenant for the use and occupation of the land. Actual rent is the rent actually agreed upon between the parties. A tenant may be induced on land on an agreement to

the rent of the tenure under S. 104 of the B. T. Act at rates much more than the rates which had been fixed in 1840.

Held, that the assessment was in accordance with law and not ultra vires. (*N. C. Ghose and Bartley, J.J.*) SATINDRA NATH CROUDHURY v. HARENDRA NATH

866—

C L J. 629.

Entries

BENGAL TENANCY ACT (1885), S. 104 A.

rent and not other entries in the record of-rights is conclusive. (*R. C. Mitter and Biswas, JJs.*) **SRISH CHANDRA NANDY v. MIDNAPORE ZENINDARY CO.**

BENGAL TENANCY ACT (1885), S. 111-A.

by landlord—*Claim to sum in excess of and over and above the settlement rent—Maintainability.*
When the amount has been paid, the claim is not maintainable.

correctly settled under the Act in setting such rent he abrogates such contractual rights and thereby exceeds his powers under the Act. It is not binding on the tenant.

void and not binding on the tenants (*Syed Nasim Ali and Henderson, JJs.*) **MIDNAPORE ZENINDARY COMPANY LTD. v. CHANDRA SINGH DUDHORIA.**

—S 104-H—*Parties—Sui status of defendant should be recorded as occupancy raiyats—If necessary and proper parties.*

In a suit framed under S. 104-H the relief claimed must determine the question whether the under-tenants are or are not necessary parties. Where the plaintiff asks for a declaration that the status of the defendants should be altered, the under-tenants or the persons who have been recorded as occupancy raiyats of a portion of the same holding are necessary and proper parties, as the decision would not only affect the status of the defendant but would also affect the status of the under-tenants. (*Wort and Manohar Lall, JJs.*) **KAMESHWAR SINGH BAHADUR v. BIBI FATMA.**

17 Pat 150 = 173 I.O. 6 = 13 B.P. 383 = 4 B.B. 222 = A.I.R. 1938 Pat. 43.

—S. 104 J and H—*Effect of—Entries in record of rights—Conclusive nature of.*

The trial of a suit under S. 106 of the B. T. Act cannot be arrested merely by reason of the transfer of the interest of the plaintiff pending suit. The transferee may, if he chooses, obtain leave of the Court under

litigation. (*Edgley, J.*) **LILABATI DAS v. GHITPUR GOLABARI CO., LTD.**

42 O.W.N. 637 = A.I.R. 1938 Cal 481.
—S. 106—*Suit under—Parties—Transferee of interest of tenant who was made pro forma defendant, not made party—Sui, if maintainable.*

The fact that in a suit under S. 106 of the B. T. Act the transferee of the interest of a tenant who was impleaded as a pro forma defendant was not made a party, does not render the suit non-maintainable on account of the defect of parties (*Edgley, J.*) **LILABATI DAS v. GHITPUR GOLABARI CO., LTD.**

42 O.W.N. 637 = A.I.R. 1938 Cal 481.
—S. 106—*Suit under—Transposition of co-sharer defendant as plaintiff after limitation—Jurisdiction of Court—C.P. Code, O. 1, R. 10—Limitation Act, S. 22 (2).*

I.T.D. v. CHANDRA SINGH DUDHORIA. 68 C.L.J. 305.

amendment—If barred.

BENGAL TENANCY ACT (1885), S 111-B.

ceased but these holdings were not recorded even as non-occupancy holdings in the Record of Rights. The

Held, that as the sub-tenants did not deny ijardar's title and as the suit was under Proviso to S. 111-A, the sub-tenants were not necessary parties to the declaratory suit brought by the ijardar. (*R.C. Mitter and Son, J.F.*) MIDNAPORE ZAMINDARY CO. v. SECRETARY OF STATE. 43 O.W.N. 57 = A.I.R. 1938 Cal 804.

—S 111 B and Limitation Act, Art. 120—*Suit for correction of record of rights—Limitation—Computation—Deduction of four months—If permissible*

—S 114—*Zamindars estate sold under Bengal Land Revenue Sales Act—Purchaser annulling under-tenures—Liability for unpaid balance of costs of preparation of Record of Rights.*

A purchaser of a zamindari estate sold under the provisions of the Bengal Land Revenue Sales Act, 1906, recovered recovery of arrears of land revenue. The purchaser has annulled, as he is entitled to do under that Act, the under-tenures, the costs of the preparation of a Record of Rights of the estate, which has been duly apportioned on the patnidars of the estate prior to his purchase of the estate and the annulment of the under-tenures. When the purchaser, under S 37, of the entire estate elects to avoid and annul under-tenures they cease to exist and when they have ceased to exist, the charge imposed on them in respect of the costs also ceases to exist. And R. 414 of the Bengal Survey and Settlement Manual does not apply as it does not purport to deal with a case of the annulment of under-tenures but deals only with death, transfer or abandonment. A purchaser is to be construed as including an assignee. 94 = 167 I.C. 741, Reverse. *RANJAN ROY v. SECRETARY OF STATE*. 19 Pat L.T. 861 =

—S 115 C—*Process*

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—S 116—*Appropriation—Term of years—Lease for one year* See B.T. ACT, SS 44 (c) AND 116. A.I.R. 1938 Pat 38

—S. 144—*One suit for rent in respect of two plots—One of them alone within jurisdiction of Court—Decree in respect of both plots—Validity.*

Where one suit for rent claiming two decrees in respect of two plots is instituted as contemplated by S. 144 of the B. T. Act and one of the plots alone is within the jurisdiction of the Court but a decree is passed in respect of both the plots, the decree is so far as it relates to the plot within the jurisdiction of the

BENGAL TENANCY ACT (1885), S. 148.

Court is valid but the decree relating to the other plot is liable to be set aside. (*Mukherjee, J.*) *KUMAR SANYAL v. DHARMADAS BHATTACHARYA*. 22 = 10 R.C. 685 = 42 O.W.N. 375.

—*Interpretation.*
—*Uses of S. 146-A of the B. T. Act cannot be read disjunctively.* (*Jack, J.*) *CHANDRA-KANTA BAL MUNSHI v. SAHARALI SHEIKH*.

67 O.L.J. 467 = A.I.R. 1938 Cal 758.

—S. 146 A (3)—*Rent suit—Co-sharer tenant coming under any of four classes—If should be impleaded.*

Under S. 146-A (3), B. T. Act, the entire body of co-sharer tenants is to include the names of every one of the four classes enumerated therein and the landlord in order to get a proper rent decree must implead as defendants every co-sharer tenant who comes under the

—*Interpretation.*
In other words, any of the four classes of tenants must be impleaded in the suit then the *(M. C. Ghose, J.)* *MISRA v. PRAN KUMAR*. 2 O.W.N. 755 = 1938 Cal 531.

—S. 146 A (3), Cl. (iii) and (iv)—*Portion of holding purchased by plaintiff—Recognition of purchase by all co-sharer landlords except one—Rent suit by latter against original tenants without impleading plaintiff—Decree and sale—What passes—Plaintiff's*

purchase after the amendment. All the co-sharer landlords except defendant No. 1 recognised the plaintiff, and defendant No. 2, one of the co-sharer landlords even accepted the transfer fees paid in respect of the auction-purchase. Defendant No. 1 brought a suit for rent against all the original tenants, impleading his co-sharer landlords as defendants. The plaintiff was not made a party to this suit. Defendant No. 2, however, subsequently joined as co-plaintiff. The rent suit was decreed and defendants Nos 1 and 2 purchased the holding in execution. The plaintiff sued for a declaration

—S. 148—*Succession to tenancy not notified—Landlord getting credible information as to who are all heirs—Decree for rent obtained against other persons—If rent decreed.*

It is, no doubt, the duty of the persons succeeding by inheritance to a permanent tenure to notify the succession and it is not the duty of the superior landlord to find out who all the heirs of a deceased tenant are. But where the landlord prior to the institution of the suit for rent or during its pendency got information with regard to succession, it is not

BENGAL TENANCY ACT (1885), S. 148-A.

to ignore that information and proceed with the suit for rent as against some other person and thereafter to say that the decree which he has obtained as against that person is a decree which should be treated as a decree for rent. (*Mukherji, J.*) **ALI BAKSHA BEPARI v. CHITTA RANJAN GUHA.** 42 C.W.N. 334

—S. 148 A (9)—Scope—Suit for rent by co-sharer landlord impleading others as defendants—If prevents latter from further prosecuting certificate proceedings previously started—Latter withdrawing from certificate proceedings and joining as co-plaintiffs in suit—Right to exclude time taken by such proceedings—Limitation Act, S. 14.

C. L. C. 100, P. 440 A. 1938 Cal. 446

ing further with the certificate proceedings previously started by them for recovery of their share of rent for the same period.

draw from the co-plaintiffs in the suit Limitation Act to ex for their claim by ex they prosecuted those C. Mitter, J.J.) H PRASAD RAY CHAUD

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—S. 153—Distri

appeal lies—Appeal—

Where the trial Court had to consider and decide a question relating to the title to the land in suit, but question did not fall for decision between parties conflicting claims to the land in suit, no appeal the District Judge from the decision of the trial But if the District Judge decides an appeal, his will be without jurisdiction and yet under S. 153 no appeal will lie against such decree. But the Court can under such circumstances vary the decree in revision.

BENGAL TENANCY ACT (1885), S. 191.

After a sale of a holding in execution of a rent decree and within thirty days of the sale the decree-holder and the judgment debtor certified to the Court that the decree had been satisfied and fully paid, and the judgment debtor deposited five per cent. of the purchase-money for payment to the auction-purchaser and prayed that the sale be set aside.

Held, that the provisions of S. 174, B.T. Act, had been substantially complied with and the sale should be set aside, it was not necessary for the judgment debtor to deposit the amount of the decretal debt in Court for the benefit of the decree-holder when the decree-holder himself had certified satisfaction of the decree. (Court.

be made before the appeal could be entertained at all. Consequently an appeal, though filed on the last date of

caution to set aside sale—Appeal.

at Court dismissing T. D. 14.

—S. 174 (5)—Order under S. 173 (3)—Right of

appeal.

applies to applications of apply to applications consequently, there is no under S. 173 (3). (S.

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C. 761=11 B. C. 171=

C.W.N. 585=A.I.R. 1938 Cal. 446.

ope—Zamindar granting mokarrari diara land at consolidated rental—

BENGAL TENANCY ACT (1885), Sch III

place of one. This can only be done by the mutual consent of the landlord and tenant. S. 191 contemplates that a lease or contract (provided it is made after the passing of the B. T. Act) may be superseded as therein stated, only where the area comprised in the tenure or holding to which the contract relates is situate

by landlord as auction-purchaser.

Dispossession by the landlords as auction-purchasers does come under the provisions of the special law of

of mortgage decree against co-sharer tenants.

Where a tenant in execution of a mortgage decree against his co-shar land, he represents sessed by the lan- would apply. A I J.) AMIRUDDIN 175 I.C. 697-1

—Sch. III,

setting up servant as tenant and dispossessing raiyat through him—Suit by raiyat to recover possession—Limitation.

Mere allegations or suggestions in the pleadings are

raiya, the dispossession is by landlord and a suit by the raiyat to recover possession is governed by Art. 3. (Agarwala, J.) BINDESHWARI RAI v. RAM PALAK SINGH. 175 I.C. 81-4 B.R. 521-10 R.P. 580-1938 P.W.N. 741-A.I.R. 1938 Pat 181.

—Chap. XIV—Rent decree—Transfer of putni tenure not recognised by landlord—Suit for rent against putnidar—On objection by latter, transferee impleaded as party defendant—Decree obtained against putnidar

against the original putnidar alone, the decree can be

cution in three years from the date of the decree. But if in the course of that period a sale has taken place, and subsequently that sale has been set aside, the inter-

BERAR ALIENATED V. TENANCY LAW, S. 78.

vening period is not to be counted, if he then desires to go on with the execution, provided there is no further break in the continuity of the execution proceedings due to his own inaction. Otherwise, the total period of time within which the decree-holder must set in motion proceedings for enforcing his decree is a period of three

VILLAGE CHOWKIDARI ACT (VI

Chowkidari jagir—Liability to resumption

See GRANT—CHOWKIDARI JAGR.

17 Pat 315.

BENGAL VILLAGE SELF-GOVERNMENT

(V OF 1919), Ss. 71 and 83—Conviction by Bench—Revision—Jurisdiction of High Court—*or of case pending before such Bench—Power of court.*

High Court has no jurisdiction to interfere in under S. 439, Cr. P. Code, with an order of conviction by a Union Bench. Nor has it power to transfer a criminal case pending before such Bench.

BENGAL WAKF ACT (XIII OF 1934), Ss 70

and 72—Petitions by mutwallis under O. 21, R. 58, C. P. Code, dismissed for default—Right of commissioner in Court.

58, C. P. Code, were dismissed as entitled to file

a similar petition of claim on receipt of notice under S. 70 of the Bengal Wakf Act, and he is entitled to have his petition heard on the merits. (S. K. Ghose and Nasim Ali, JJ.) COMMISSIONER OF WAKFS, BENGAL v. GAGAN CHANDRA DAS.

I.L.R. (1938) 2 Cal 187-42 M.W.N. 616.

—S. 71—Property not admitted to be wakf—Right of Commissioner to intervene

Per Nasim Ali, J.—S. 71 of the Bengal Wakfs Act

BERAR ALIENATED VILLAGES TENANCY

Limits.

lated by S. 22 Law, could only had been reaped ed, and only on doe for more ANDRA GOVIND 173 I.C. 800-

10 R.N. 325-A.I.R. 1938 Nag 202.

—S. 76 (3)—Suit for arrears of rent due to alienation tenant—Limitation.

BERAR INAM RULES (1859).

According to S. 76 (3) of the Berar Alienated Villages Tenancy Law, the period of limitation for a suit by a landlord for an arrear of rent due by an ante alienation tenant is three years and this is notwithstanding anything contained in Arts. 120 and 132 of the Limitation Act. (*Pollock, J.*) **RAMCHANDRA GOVIND v. MISHRIMAL CHANDANMAL.** 173 I.C. 800—

10 B.N. 325—A.I.R. 1938 Nag. 202.

BERAR INAM RULES (1859)—*Scope of—Enfranchisement following from grant—Rules, if to be applied*

The Inam rules lay down the general principles of succession and enfranchisement, and if the act of enfranchisement follows from the terms of the Inam grant itself, it is not necessary that it should be brought about by the exact operation of the rules. (*Roughton, F.C.*) **MIR AHSANALLI v. MST. HUSSAJNBI**

1938 N.L.J. 248.

—**B. IV**—*Inam—Service grant—Succession to—Sister and Father's brother's son—Preferential right—Watan belonging to family—Succession to.*

A person who is disqualified by reason of sex from performing a particular service cannot be considered a

BERAR PATELS AND PATWARIS LAW (1900).

S. 6.

—**B. VI, Cl (4)**—*Interpretation—Grant in return for services—Services ceasing to be rendered—Continuing of service grant by Inam commissioner—Nature of estate granted to inamdar.*

Where the original grant of lands was in return for certain services which had now ceased to be rendered and the service grant was continued in perpetuity on the recommendation of the Inam commissioner on payment of 'one half rates of assessment,' it was held on an interpretation of Cl. 4 of R. 6 of the Berar Inam Rules

—**Powers of Deputy Commissioner—Reduction of nazul ground rent.**

S. 102 of the Berar Land Revenue Code only gives the Deputy Commissioner, powers to interfere to correct an error due to a mistake in survey or arithmetical calculation. Reduction of nazul ground rent cannot come under the section. (*Roughton, F.C.*) **UMAR HAJI,** 1938 N.L.J. 316.

which belongs to the family. A watan is not the same thing as an inam. (*Roughton, F.C.*) **HARNABAI v. GANGADHAR** 1938 N.L.J. 22.

—**B. V, XI & XV**—*Applicability and scope—Inam grant—Representation of inamdar and application to Inam rent.*

A govern the De tection grant not apply to the Inam Commissioner or get the

and *Puranik, J.*) **LAXMAN v.** I.L.R. 1938 Nag. 1

—**B. V (3) and (6)**—*U grant—If precludes its enfranch.*

The use of the words 'as the Jahgir' in the inam grant does not preclude the inam from being enfranch.

S. 129—*Persons acquiring right of easement under ordinary law—If need apply to Deputy Commissioner.*

S. 129 of the Berar Land Revenue Code can never

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the T. P. Act.

patwari"—*Meaning of—Rate fixed by agreement—*

Power of Deputy Commissioner to fix emolument

The words "emoluments of a patwari"

S. 6 (3) of the Patels and Patwaris Law is interpreted as meaning the emoluments at the rate fixed by the Deputy Commissioner under the proviso (b) after the patwari has intimated that he no longer abides by the agreed rate. When the rate of emoluments has once been fixed by agreement between the Jagirdar and the Patwari, the Deputy Commissioner cannot fix emoluments under S. 6 (3). S. 6 (3) does not further come into operation unless there has been a withholding of payment by the proprietors, and when the withholding is condoned by

agreement" are to be interpreted. Then the commissioners are to decide at a meeting what tests shall be applied. (*James and Dhavle, JJ*) CHAIRMAN, ARRAB M.

16 Pat.

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When a person is a patwari, he is a mahk

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license giving him the right to collect the tolls. There was only a resolution of the Municipality, but no contract or document under seal as required by S. 64 of the

defendant.

Held, (1) that there was no contract binding under the Act, and the contract not being in accordance with S. 64 could not be sued upon; (2) that if the Municipality be held entitled to sue on the basis of an implied contract, Art. 115 of the Limitation Act applied to the case, and the suit brought more than three years after the breach was barred. (*Wort and Varma, JJ*)

Y. D., 1938—8

10 R.P. 628—19 Pat. L.T. 405—1938 P.W.N. 444—

A.I.R. 1938 Pat. 391.

111—Applicability—Latrine tax—Claim

ser of unoccupied holding—Sustainability.

AND ORISSA MUNICIPAL ACT, SS. 100

1938 P.W.N. 444.

—S. 111—Holding unoccupied—Owner—If

nd 119—Objection as to liability to

observance of procedure under S. 116—

Scope of.

Where an assessee disputed his occupation of any holding or his liability to be assessed, it is necessary under S. 116 of the Act that he should apply to the assessment or exemp-

rides that no objection

in any other manner

(*James and Dhavle,*

JJ) CHAIRMAN, ARRAB MUNICIPALITY v. RAM-

KUMAR CHOUDHURY. 16 Pat. 662—

1938 P.W.N. 33—19 Pat. L.T. 91—

174 I.O. 855—4 B.E. 488—10 R.P. 558—

A.I.R. 1938 Pat. 177.

—S. 119—Bar under—Scope of. See BIHAB AND

ORISSA MUNICIPAL ACT, SS. 116 AND 119.

18 Pat. 6

BERAR INAM RULES (1859).

According to S. 76 (3) of the Berar Alienated Villages Tenancy Law, the period of limitation for a suit by

BERAR INAM RULES (1859)—*Scope of—Enfranchisement following from grant—Rules, if to be applied.*

The Inam rules lay down the general principles of succession and enfranchisement, and if the act of enfranchisement follows from the terms of the Inam grant itself, it is not necessary that it should be brought about by the exact operation of the rules. (*Roughton, F.C.*) **MIR AHSANALLI v. MST. HUSSAINBI.** 1938 N.L.J. 248.

—**R. IV**—*Inam—Service grant—Succession to—Sister and Father's brother's son—Preferential right—Watan belonging to family—Succession to.*

A person who is disqualified by reason of sex from performing a particular service cannot be considered a

which belongs to the family. A watan is not the same thing as an Inam. (*Roughton, F.C.*) **HARNABAI v. GANGADHAR.** 1938 N.L.J. 22.

—**R. V, XI & XV**—*Applicability and scope—Inam grant—Representative of inamdar not admissible to Inam rent—*

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and *Puranik, J.* **LAXMAN v.**
L.L.R. 1938 Nag. 1.

—**R. V (3) and (5)**—*U.*
grant—If precludes its enfranchisement.

The use of the words 'as the Jahgir' in the Inam grant does not preclude the Inam from being enfranchised. (*Roughton, F.C.*) **MIR AHSANALLI v. MST. HUSSAINBI.** 1938 N.L.J. 248.

—**R. VI (2) and V (2)**—*Applicability—Inam for the 'service of Dismukh and maintenance'.*

The words in a grant 'maintenance' suggest that the mere maintenance grant under Berar Inam Rules and by clause 11 of the Inam Rules is governed by Cl. (2) of R. V, except in so far as that clause is inconsistent with R. VI. (*Roughton, F.C.*) **MT. RENUKABAI, In re.** 1938 N.L.J. 258.

BERAR PATELS AND PATWARIS LAW (1900).

S. 6

—**R. VI, Cl. (4)**—*Interpretation—Grant in return for services—Services ceasing to be rendered—Continuation of Inam commissioner—Nature of*

grant of lands was in return for had now ceased to be rendered as continued in perpetuity on the Inam commissioner on payment

of 'one half rates of assessment,' it was held on an interpretation of Cl. 4 of R. III of the Berar Inam Rules which governed the case that the grantee obtained a free hold estate. (*Pollock, J.*) **DIGAMBEAR v. KISHANDAS GOVERDHANDAS.** 174 I.C. 84—10 R.N. 340—A.I.R. 1938 Nag. 220.

BERAR LAND REVENUE CODE (1928), S. 102

—*Powers of Deputy Commissioner—Reduction of Inam ground rent.*

S. 102 of the Berar Land Revenue Code only gives the Deputy Commissioner, powers to interfere to correct an error due to a mistake in survey or arithmetical calculation. Reduction of Inam ground rent cannot come under the section. (*Roughton, F.C.*) **UMAR HAJI, In re.** 1938 N.L.J. 318.

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APPA KOMTI v.
38—10 R.N. 291—
A.I.R. 1938 Nag. 144.

—**S. 129**—*Persons acquiring right of easement under ordinary law—If need apply to Deputy Commissioner.*

S. 129 of the Berar Land Revenue Code can never

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S. 155—Absence of Jurisdiction to sell—Ques-
A.I.R. 1938 Nag. 144.

the T. P. Act.

The word 'sale' in S. 176 of the Berar Land Revenue Code is not to be construed in the narrow sense in which it is used in the T. P. Act. As such it includes an oral sale. (*Bose, J.*) **JAINARAYAN v. BALWANT.** 1938 N.L.J. 379.

THE AMENDMENT OF S. 6 (3) OF THE BERAR PATILS AND PATWARIS LAW was an alteration by way of limitation of the period within which application for assistance could be made to the Revenue Court. The right under S. 6

BIHAR TENANCY ACT (1885), S. 148

KUNJ BEHARI THAKUR. 17 Pat. 218-4 B.R. 356-1

—S. 148—*Scope*
for rent—*Defect in*
all plots in holding—*Effect*—*Right to decree*—*Admission by defendant*—*Effect of*.

A suit for arrears of rent is a suit of a double nature. It is ordinarily a suit to enforce the charge upon the holding which is created by S. 85 of the Bihar Tenancy Act, but a decree enforcing this charge can only be made when the claim is framed so as to exactly comply with

possession of the area which he claims and there has been no ejectment by the landlord, the latter ought not

to be allowed to sue for damages. It appears that he was not been willing to give a quitabance in the manner required by law, he should not be allowed any damages

11 B.P. 171—1938 P.W.N. 378—
19 Pat. L.T. 325—A.I.R. 1938 Pat. 306 (S.B.).

—S. 148—*Scope*—*Suit for rent of part of holding*
—*Maintainability*—*Money decree*—*Power of Court to pass*.

A suit for rent in respect of a part of a holding is not maintainable at all, nor can the Court pass a decree even. (Agarwala, J.) DWARKA SINGH v. BABU LAL SINGH. 174 I.L.

10 R.P. 630—1938 P.W.N.
18 Pat.L.T. 1021—A.I.R. 1938 Pat. 124.

—S. 148 (h)—*Applicability*—*Decree for arrears of rent in favour of landlord*—*Latter assigning interest in zamindari to superior landlord*—*Subsequent assignment of decree to another*—*Application for execution by assignee of decree*—*Competency*.

BIHAR TENANCY ACT (1885), S. 171

10 R.P. 426—18 Pat. L.T. 1017—

CHANDRA MAHTON v. RAM GULAM MAHTON.
177 I.O. 529—4 B.R. 828—11 R.P. 160—
A.I.R. 1938 Pat. 305.

—S. 153—*Appeal*—*Conflicting claims*—*Suit for rent below Rs. 50 against A—A alleging that B was in possession of lands—B joined and allowed to contest*—

the tenant and comes under one of the exceptions mention in S. 153 of the Bihar Tenancy Act and a

—S. 153—*Question of title*—*Suit for rent valued below Rs. 100*—*Decision by District Judge holding that right to collect rent alleged not made out*—*Second appeal*.

Certain co-sharer landlords instituted rent suits against the tenants for a certain percentage of the rent on the ground that by an arrangement their co-sharer landlords were entitled to realise the rent to the extent claimed by them. The suit was valued below Rs. 100 and the co-sharers of the plaintiffs were not impleaded as parties to the suit. The tenants-defendants did not claim any interest in the land adverse to the plaintiffs. The Munsif and in appeal the District

decided between the parties.

Held, that as S. 153 of appeal (Kha THAKUR v. I.

—S. 171—*Applicability*—*Rent decree against tenant*—*Force of S. 26-N of Act*—*If creates to be rent mortgage to benefit of*

—d as a suit for arrears of Act is instituted and a Act as a rent decree N of the amended Act urning of the decree and decree anything other hat under S. 26-N of the ust be deemed to have given his consent to transfers made prior to 1923, and to the distribution of rent upon which the transferor and

Rowland, J.J.) KEDAR NATH v. SANRU KAZI
17 Pat. 189—173 I.O. 609—4 B.R. 312 (1)—

BIHAR AND ORISSA MUN. ACT (1922), S. 180.

—Ss 180 and 363—Limitation—Municipal license fee—Suit for—Limitation applicable. See **LIMITATION ACT, ARTS. 115 AND 20.**

A I R 1938 Pat. 192.

—S 182 (5)—Road side lands—Municipality to lease—Lease for five year of renewal for erecting petrol pump—Court

The powers conferred on Municipalities roadside lands are very limited. Roads (lands) are only vested in the Municipality lease of such land by the Municipality for an option of renewal and authorizing the petrol pump on roadside land is beyond the powers of the Municipality to grant in exercise of its powers under the Act. It is not competent to the Municipality under the Act and the bye-laws under S. 185 (b) to make an income by putting up substantial buildings on roadside lands through lessees while largely destroy of the abutting properties of private owner.

J. DWARKA PRASAD SINHA v. P. MUNICIPALITY.

177 I C 315.

11 B P. 142 = 19 Pat. 444, Oll.

A I R 1938 Pat. 472.

BIHAR AND ORISSA RECOVERY ACT (IV OF 1)

—Service of—Validity—For service—If material.

The validity of the service of the Public Demands Recovery Act depends upon the form of the process service. Where it is found that it

according to the statutory rules under Act. (*Courtney-Terrell, C. J. and J.*)

KESHWAR SINGH v. KESHO PRASAD SINGH.
1938 P.W.N. 202 = 19 Pat. L.T. 645 = A I R 1938 Pat. 622.

—Ss. 24 and 25—Order re sale by certificate officer—Suit by possession—Limitation applicable. ACT, ART. 11.

—S 25—Scope—Certificate—and finality of—Decision on claim be challenged or ignored in suit raised and raised in suit—If can be abandoned in appeal.

The Certificate (Public Demands Recovery) Act has a procedure of its own according to which as soon as a certificate is signed by the certificate officer, it becomes a decree, and then may follow certain enquiries as a result of which the decree may either be cancelled, varied or may be proceeded with. The decree may be varied or cancelled under S. 10 of the Act on objection

BIHAR MONEY-LENDERS' ACT (1938), S. 16.

11 B.P. 43 = 1938 P.W.N. 329 =

19 Pat. L.T. 328 = A I R. 1938 Pat. 315 (S.B.).

—Sch. II, R. 25—Notice under—Service on debtor's elder brother—Validity—Suit to set aside sale

or was informed of such service (*Courtney Terrell, C. J. and James, J.*) **RAM KESHWAR SINGH v. KESHO PRASAD SINHA.**

1938 P.W.N. 202 =

19 Pat. L.T. 645 = A I R. 1938 Pat. 622.

BIHAR AND ORISSA SUGAR CANE RULES
Object and scope of—Infringement of rule

distinctly makes the

possessing agent liable if it is found that the weighment

(*Varma, J.*) **BALA BUX v. EMPEROR.** **176 I C 558 =**

39 Cr. L.J. 732 = 11 B.P. 85 = 4 B.R. 734 =

19 Pat. L.T. 384 = A I R. 1938 Pat. 386.

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intend to interfere with those litigations which were pending when the Act came into force and certainly not those which had already culminated in a decree, whether of the trial court or of the appellate Court (*Wort, A. C. J. and Manohar Lal, J.*) **BIBI SHAIMA v. BANK OF BIHAR, LTD.** **178 I C. 383 = 1938 P.W.N. 603 =**

19 Pat. L.T. 585 = A I R. 1938 Pat. 484.

—S 16—Applicability—If confined to executions

BIHAR MONEY-LENDERS' ACT (1938), S. 16.

—S. 16—*Scope of void on the ground of repugnancy to O. 21, R. 66, C.P. Code (Patna Amendment)—Government of India Act, 1935, S. 107.*

The effect of S. 107 (1) of the Government of India Act, 1935, any law concurrent existing repugnancy

or of His Majesty is given as laid down in S. 107. ■ 21, R. 66, C.P. Code, as amended by the Patna High Court is an existing Indian law within the meaning of S. 107 of the Government of India Act, while O. 21, R. 66, as amended, provides that the Court

enjoins the Court to estimate the value and mention it in the sale proclamation and to vouch for the absolute

v. HARIHAR GIR.

19 Pat.L.T. 760=1938 P.W.N. 765.

BIHAR TENANCY ACT (VIII OF 1885)—Occupancy raiyat—Acquisition of rights of—Person in possession recognized as tenant by receiver of estate—Payment of rent to receiver—Effect of—Receiver—If landlord.

A receiver in judicial possession of an estate by the implicit consent of the parties under the orders of the Court must be treated as the landlord for the time being. When the receiver acting *bona fide* person in possession as tenant, doing so course of management and receives rent over seven years, the latter acquires right occupancy raiyat under the Bihar Tenancy Act showing continuous and unbroken possession statutory period. It is not open to the eject such tenant by pleading that the tenure only so long as the receiver continues to manage the estate. (*Fast Ali and Manohar Lall, J.*) MAHABIR DAS v. UDIT NARAIN VARMA.

19 Pat.L.T. 570=A.I.R. 1938 Pat. 613.

—Ss 26 E and 26 F—*Scope—Duty of Collector under—Enquiry—Scope of—Power to refuse to accept tender of transfer-fee.*

There is no provision in the Bihar Tenancy Act which authorises the Collector to refuse to accept a deposit of the landlord's transfer fee properly tendered to

BIHAR TENANCY ACT (1885), S. 29

MAHADEO JHA v. JOGESHWAR V N 135. Scope and Confir-

mation in ignorance of—Legality—Non-deposit of amount and non filing of notice—If renders confirmation illegal. See C.P. CODE, S. 151 1938 P.W.N. 192. —(as amended in 1934), S. 26 N—Scope and

See 654.

effect—Transfer of part of holding—Suit by landlord more than 10 years after against recorded tenant alone—Decree and execution sale—Transferee's title—If affected.

Section 26 N of the Bihar Tenancy Act is retrospective the object of the section is to quiet titles which more than ten years old, and to ensure that if those ten years the transferee has not been 1, he shall have the right to remain on the land. ■ 13 there was a transfer of a part of a holding to plaintiff, which transfer, according to the plaintiff, was recognized by the landlord. In 1931, the landlord

to that action. (*Wort and Varma, J.*) MAHAKUR DAI v. ISSARDYAL PARSHAD. 17 Pat. 339=

A.I.R. 1938 Pat. 559.

—(as amended in 1934), S. 26 O—Scope and effect of—Retrospective effect—Transfer without consent—Action for ejectment by landlord—Deposit of landlord's fee with Collector and grant of receipt by latter—Effect—Consent of landlord—If deemed to be given

S. 26-O of the Bihar Tenancy Act as amended in

to the transfer must, under S. 26 O (3), be *prima facie* be deemed to have been given from the date on which the receipt is granted, with the result that the landlord's action for ejectment must fail. (*Agarwala, J.*) MAHADEO JHA v. JOGESHWAR THAKUR.

1938 P.W.N. 135.

—S. 29—*Scope—Occupancy tenant—Kabuliat regarding land occupied by him together with new land at enhanced rent, to be doubled after certain period—Effect of.*

BIHAR TENANCY ACT (1885), S. 29.

after the period clearly contravened, S. 29. (*Wort and Rowland, J.J.*) RAINITI PRASAD SINGH v. RAMUD GAR. 174 I.C. 367=4 B.R. 437=

19 Pat.L.T. 380=10 R.P. 503=

Failure to prove contract—If bar to relief.

It has always been held to be the law that a tenant, whether he be an occupancy *rasyat* or otherwise, is entitled to an abatement of rent if the whole or part of the land held by him is diluviated. Ss. 38 and 57 of the Bihar Tenancy Act make this clear, so far as Bihar is concerned. S. 52 is wider than S. 38 in terms, the latter section being applicable to the case of a tenure-holder. Lands in Sonthal Parganas are no exception to this rule. The fact that the tenants fail to prove a contract to that effect on which they are entitled under the law, though their claim on the contract and not on (*Wort and Agarwala, J.J.*) FOUZ DHANA KUMARI DEVI

17 Pat. 530=

19 Pat.L.T. 658=A.I.R. 1938 Pat. 597.

(as amended in 1931), S. 50 (2)—Presumption under—When arises

S. 50 (2) of the Bihar Tenancy Act only provides for the presumption that land is held at a uniform rent since the permanent settlement from which it has not been changed during the 20 years before the institution of a suit 'until shown.' Where the rent was changed

subject to arrears of rent subsequent to suit but anterior to sale—Liability for such arrears—Landlord's right to proceed against tenant—Landlord purchaser and stranger purchaser—Distinction.

A landlord who purchases the tenant's

between the position of a third party purchaser who purchases subject to the encumbrance and that of the decree-holder landlord who himself purchases under like circumstances. (*Wort, C.J. and Varma and Manohar Lal, J.J.*) NRIPENDRA NATH CHATTERJEE v. KULDIP MISHRA 178 I.C. 10=5 B.R. 68=

19 Pat.L.T. 723=1938 P.W.N. 720=

—S. 116—Subdivision of land—Landlord's right—E.

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BIHAR TENANCY ACT (1885), S. 116.

would be binding upon the landlord when the *thiccadar* has acted in good faith and in the ordinary course of business. Where the action of the *thiccadar* has been absolutely *bona fide*, that binds the landlord and it is

—Ss. 105 and 109—Scope—Application for settlement of fair rent withdrawn—Subsequent suit on same matter—Bar of.

The withdrawal of an application under S. 105 for settlement of fair rent of kabilagan land debars the Civil Court from entertaining a subsequent suit on the same matter. S. 109 is a bar to such a suit. Such a suit is also barred by limitation when the defendants having denied in the case under S. 105 the plaintiff's

—S. 116—Construction—Lease for "a term of years"—Meaning of—If to be one for at least two years.

The words "a term of years" in S. 116 of the Bihar Tenancy Act are merely a classificatory term and mean nothing more than any definite term, any definite term of time may be measured in years though not

period to come to an end more. The words "a term of years" mean that the term is at least two years (*Courtney*) UMASHANKAR PRASAD

17 Pat. 218=

1 B.L. 300=1938 P.W.N. 254=173 I.C. 904=

10 R.P. 461=19 Pat.L.T. 180=

A.I.R. 1938 Pat. 299

—S. 116—"Lease from year to year"—Meaning of—Lease for one year only ending on fixed

year—Tenant not delivering—Status of—Liability to eject—Rights—Maintainability.

When his lease comes to an end

whereas when the latter expression is used, the tenant has the right to stay for a year certain, and if he shall not receive notice from the landlord to quit his tenancy at the end of the year certain, then his tenancy shall extend for another period of one year. The expression "from year to year" does not therefore cover the case of a lease for a year certain. A tenant to whom zeroat land

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(*Courtney Ter*)

KAR PRASAD v.

BIHAR TENANCY ACT (1885), S. 148.

KUNJ BEHARI THAKUR. 17 Pat. 218=
4 B.R. 556=1938 P.W.N. 254=173 I.C. 901=
10 R.P. 461=19 Pat.L.T. 180=
A.I.R. 1938 Pat. 239.

—S. 148—Scope—Non-compliance—Effect—Suit for rent—Defect in frame of plaint—Omission to mention all plots in holding—Effect—Right to decree—Admission by defendant—Effect of.

A suit for arrears of rent is a suit of a double nature. It is ordinarily a suit to enforce the charge upon the

land because a decree cannot be made enforcing the charge in such a manner as to entitle the purchaser at the execution sale to annul all incumbrances. The suit being also one to enforce the personal liability of the tenant to pay a sum of money to the landlord, a decree enforcing this personal liability may be made even

especially when the latter admits that an amount of rent is due from him to the landlord. When the tenant is in possession of the area which he claims and there has been no ejectment by the landlord, the latter ought not

to be denied the right to sue for rent. It appears that he has not been willing to give a quitance in required by law, he should not be allowed a or interest on his claim. (Courtney Terrell

19 Pat L.T. 325=A.I.R. 1938 Pat. 306 (S.B.).

—S. 148—Scope—Suit for rent of part of holding—Maintainability—Money decree—Power of Court to pass

A suit for rent in respect of a part of a holding is maintainable at all, nor can the Court decree even (Agarwala, J.) DWA SINGH v. BABU LAL SINGH

10 R.P. 630=1938 P.W.N. 62=
18 Pat L.T. 1021=A.I.R. 1938 Pat. 124

—S. 148 (h)—Applicability—Decree for arrears of rent in favour of landlord—Latter assigning interest in zamindari to superior landlord—Subsequent assignment of decree to another—Application for execution by assignee of decree—Competency.

An assignee of a decree for arrears of rent who has

zamidari to the superior landlord and then assigns the decree for rent to another, S. 148 (h) of the Bihar

BIHAR TENANCY ACT (1885), S. 171.

10 R.P. 426=18 Pat. L.T. 1017=
A.I.R. 1938 Pat. 95.

—S. 148-A—Rent suit for part of holding—Maintainability—Money decree—If may be passed

A suit for rent with regard to a part of holding is not maintainable. In such suit the landlord is not entitled even to a money-decree. (Wort, J.) RAM CHANDRA MAHTON v. RAM GULAM MAHTON.

177 I.O. 529=4 B.R. 826=11 R.P. 160=
A.I.R. 1938 Pat. 305.

—S. 153—Appeal—Conflicting claims—Suit for alleging that B was in allowed to contest—

A landlord brought a suit for rent against A as tenant and the rent claimed was below Rs. 50. A alleged that suit lands were in possession of B. B was joined as party and allowed to contest the suit.

Held, that the appeal lay to the District Judge and also second appeal to the High Court, as there was conflict of conflicting claims of A (J.) BIKRAM RAJ v. PALAK

4 B.R. 219=10 R.P. 380=
A.I.R. 1938 Pat. 37.

the tenant and comes under one of the exceptions mention in S. 153 of the Bihar Tenancy Act and a

(Katterji, J.) SHIVA

175 I.O. 61=
A.I.R. 1938 Pat. 379.

for rent valued
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made out—Second

Certain co-sharer landlords instituted rent suits against the tenants for a certain percentage of the rent on the ground that by an arrangement their co-sharer landlords were entitled to realise the rent to the extent claimed by them. The suit was valued below Rs. 100 and the co-sharers of the plaintiffs were not impleaded as parties to the suit. The tenants-defendants

separate collection of rent even to the extent of their shares and dismissed the suit. No question of title was decided between the parties.

Held, that no second appeal lay to the High Court, as S. 153 of the Bihar Tenancy Act barred a second appeal. (Khaia Mohammad Noor, J.) JAGDAN THAKUR v. HIRA THAKUR. 19 Pat L.T. 212.

—S. 171—Applicability—Rent decree against tenant—Subsequent coming into force of S. 25-N of Act—Effect—Decree—If ceases to be rent Execution—Right of mortgagee to benefit of

a suit properly framed as a suit for arrears of rent under the Bihar Tenancy Act is instituted and a decree executable under the Act as a rent decree is

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BIHAR TENANCY ACT (1885), S. 171.

the transferee had agreed, and that thereby the decree in effect at the time of execution affects two holdings, is no ground for holding that the decree is not a rent decree. The new S 26 N no doubt confers new rights on purchasers, but the decree remains a rent decree and for purposes of execution the parties are governed by the Bihar Tenancy Act. S. 171 of the Bihar Tenancy Act can therefore be applied to the decree in execution, and

BIRBHUM GHATWALI REG. (1814), S. 5.

to set aside sale. See C. F. CODE, S. 151.

1935 P.W.N. 192.

—S. 181—Grant of land to gorait in lieu of services—Resumability.

Chakrana Jagirs when they are granted in lieu of remuneration for zamindari service differ essentially from those jagirs which may be granted as rewards for past services or grants of land burdened with some

crops reaped by mortgagee.

Where a mortgagee of a recorded tenant deposits the

mortgagee to prevent the sale that the judgment debtor tenant (mortgagor) would be entitled to regain possession of his holding. A deposit by the tenant judgment-

for it remuneration in cash or kind. The zamindar is entitled to dismiss at his pleasure a servant of this kind,

lists of the

HILLING-

I.R. 463=

10 B.L. 529=A.I.R. 1935 Pat 141.

—S. 193 and Sch. III, Sub-Cl. 2 (b)—Applicability—Money reserved under settlement in respect of

getting possession—Application by tenant to be put back in possession offering to pay mortgagee amount deposited by him—Power of Court to entertain.

Quære.—Whether the Court has jurisdiction under S. 171 of the Bihar Tenancy Act to entertain an application by the tenant judgment-dee dispossessed under the section by a

—(as amended in 1934), Sch II, Art 2 (b) (ii)

—Scope—If retrospective—Suit for produce rent after act on cause of action arising before—Limitation.

Quære.—Whether the Bihar Tenancy Amending Act is

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A.I.R. 1937 Pat. 639.

A.I.R. 1938 Pat. 94

—S. 171—Jurisdiction under—Omission to make deposit at time of application—Effect—Power of Court

19 Pat.L.T. 519=4 B.R. 633= 21 B.P. 20=A.I.R. 1938 Pat. 245.

BIEBHUM GHATWALI REG. (1814), S. 5.

—S. 5—*Ghatwal*—Power of Government to dismiss and to forfeit tenure.

Per *Chatterjee, J.*—S. 5 gives in clear terms to the Government full power to forfeit the tenure of the defaulting *Ghatwal* and to make it over to any person whom it may approve or otherwise to dispose of it in such manner as it may think proper. It is thus evident

which he holds the tenure the *Ghatwal* is dismissed from his office by the Government his tenure is forfeited and the Government has a right to make a new grant to any person whom it may consider fit. Once a tenure is forfeited the right of the Government to resettle it with any new *Ghatwal* who Ordinarily the Govern the hereditary claim *Ghatwal* but he cannot ment (*Afanakar Lal* NARAIN v. RADHA P. A.

175 I.O. 854—11 Pat. L.T. 519—4 B.B. 633—
11 R.P. 20—A.I.B. 1938 Pat. 245.

—S. 5—*Scots*—If incorporated in S. 8 (2), *Sonthal Parganas Rural Police Regulation*.

(*Afanakar Lal and Chatterjee, J.J.*) JOGENDRA NARAIN v. RADHA PRASAD 17 Pat. 398—

175 I.O. 854—19 Pat. L.T. 519—4 B.B. 633—
11 R.P. 20—A.I.B. 1938 Pat. 245.

BOMBAY ABKARI ACT (V OF 1878), S. 43 (b)—Burden of proof—Shifting of.

The burden of proof on prosecution which shifts under proceedings under the *Abkari Act*, does not shift until the factum of possession is proved. (*Davis, J. C. and Lobo, J.*) EMPEROR v. HAJI GHULAB SHAH.

32 S.L.R. 689—174 I.O. 835—
10 R.E. 289—59 Cr.L.J. 504—
A.I.B. 1938 Sind 80.

—S. 47—*Licentee's liability for acts of servant*—
"All due and reasonable precautions"—Construction of.

The language used by the Legislature in S. 47 of the *Bombay Abkari Act* is very wide. But a statute should be construed not with reference to its language, but also its subject matter and object; further in construing the provisions of S. 47 regard must also be had to the express terms of the limitation contained in the section. The section which expects the discharge of a duty by the licensee must always be regarded in the administration of the law subject to the maxim *lex non cogit ad impossibilia aut inutilia*. The phrase "all due and

person would take in endeavouring to prevent transgressions of the terms of the license in carrying out the object of the license. The licensee's liability must be decided according to the circumstances of each case. (*Wassoodew and Samjee, J.J.*) EMPEROR v. GANPAT

BOMBAY CITY MUNICIPAL ACT (1888), S. 527.

LAXMAN, 177 I.O. 665—11 R.B. 112—
40 Bom. L.R. 820—A.I.B. 1938 Bom. 427.

BOMBAY CHILDREN ACT (XIII OF 1924), Ss. 3 (a) and (c) and 22—Conviction of youthful offender—Detention in prison—Certificate—Necessity.

Where the accused, convicted of the offence of

A.I.B. 1938 Sind 224.

BOMBAY CITY MUNICIPAL ACT (III OF 1888), Ss. 106 and 110—Loan by corporation—Issue of debentures with option of renewal—If compulsory
Section 106 of the *City of Bombay Municipal Act*

debentures containing a right or option of renewal. (*Beaumont, C. J. and Wadia, J.*) VISHWANATH SADASHIV CITY OF B.

—Powers of Commissioner under—Notice of validity—Notice requiring owner

within 15 days to connect unconnected waste water to municipal storm water drain—Validity.

The notice authorised by S. 231 of the *Bombay City Municipal Act* is one requiring the owner or occupier of a house to make a drain of the character therein specified, that is to say, of such material, size and description and so forth as may appear to the Commissioner necessary. A notice served by the Commissioner on the owner or occupier of a house requiring him within 15 days to connect the unconnected waste water of the naharies and wasting places in the municipal storm water drain at a particular place after obtaining neces-

—S. 391 (1) (b) and Sch. M, Part III—
"Timber"—Plywood—If timber.

The object of requiring a license for the keeping of articles mentioned in Part III of Sch. M of the *City of Bombay Municipal Act*, is to safeguard the public against nuisance or danger. Timber is not used in Part III of Sch. M, in any technical sense, it only means wood used for building or carpentry. "Timber" in Part III of Sch. M does not include plywood. Keeping of timber in a place where it is liable to be an offence under keeping it can be (*Wassoodew J.*) Est.

5—10 B.B. 537—
40 Bom. L.R. 322—A.I.B. 1938 Bom. 282.

—S. 527—Applicability—Act done in pursuance of contract authorised but not required by Act—Suit against corporation—Limitation—Period of six months—Starting point of.

BOMBAY CITY POLICE ACT (1902), S. 27.

The protection of S. 527 of the City of Bombay Municipal Act extends only to acts done in direct execution of the powers conferred by that Act of the local authority or corporation, and does not cover acts done in pursuance of contract which the local authority or corporation is empowered to enter into, but is not required to enter into, by the Act. Plaintiffs and *N* were joint holders of eight debentures issued by the corporation of Bombay, under the terms of which either the plaintiffs or any of them or *N* could deal with them. *N* died on 13-7-1930, and shortly after, *A*, to whom the debentures had been handed over for collection wrongfully dealt with them by forging an endorsement by *N* in favour of himself and of a nominee for Bank ratio the corporation pointing out that *A* had forged *N*'s signatures and asking the corporation to return the original debentures to the plaintiffs. They sent a reminder on 15-2-1933. On 6-3-1933, the corporation wrote to the plaintiffs asking them to wait for their next letter and to take no action in the meanwhile. After further correspondence the corporation wrote on 27-7-1933 to the effect that it was not possible to reply definitely, but that they could not give a definite promise to admit or deny the plaintiff's requirement to keep in view their parties concerned. On 11-8-1933, the

in contract, (2) that the issue of a debenture containing an option of renewal, and the giving effect to that option were not acts done in direct execution of any

S. 527 of the Act had no application to the case, (4) that assuming S. 527 applied to the case, the cause of action for suit did not arise until a demand was made for return of the debentures and that demand is refused, and as the cause of action did not arise until 27-7-1933, the suit filed on 11-8-1933 was well within time

BOMBAY CITY POLICE ACT (1902), S. 27

—Construction and scope—Order under—Conditions for making—Commissioner's power to deport dangerous or undesirable character.

Section 27 of the City very limited application. sections which confer upon the power to deal with various the public safety, and the orders to be Commissioner under those sections are strictly temporary character. It is clear language of S. 27 that the foundation for under the section is the movements or enc any gang or body of persons. Before any action can be taken under the section it must appear to the commis-

BOMBAY CITY MEDICAL CODE, R. 7.

sioner that the movements or encampment of a gang or body of persons are or is causing or calculated to cause danger or alarm, or a reasonable suspicion that unlawful designs are entertained by such gang or by any member or members thereof, then only can the Commissioner give directions to the members of the gang or body. He has no power under the section to deport any one whom he regards as a dangerous or undesirable character apart from his actions as a member of a gang or a body of persons moving or encamping in the city. (*Beaumont, C.J., Rangnekar, Wadia and Vaswadev, J.J.*) **EMPEROR v YARMAHOMED AHMEDKHAN.**

I L R. 1938 Bom. 403 = 176 I.C. 839 = 11 B.E. 53 = 39 Cr.L.J. 792 = 40 Bom.L.R. 483 = A.I.R. 1938 Bom. 338 (F.B.).

—S. 27—Order under—Validity—If can be in Court of law—Prosecution for disobedience—Duty of Court—Burden of proof.

An order made under S. 27 of the City of Bombay Police Act is, it is true, an order made by an executive officer and is not subject to appeal or revision in any Court. But that is very different from saying that when an attempt is made to impose a penalty for breach of an order under S. 27, the validity of the order cannot be impeached. In all charges before a Magistrate under S. 128 of the Act for disobedience of an order under S. 27, it is incumbent upon the Magistrate to be satis-

why the Commissioner should not give evidence before the Court as to the general character of the material which he had before him. (*Beaumont, C.J., J.*) **EMPEROR v.**

= 176 I.C. 839 =

Bom.L.R. 483 =

A.I.R. 1938 Bom. 338 (F.B.).

—S. 128 — Charge under—Burdens of proof—Validity of order disobeyed—If can be gone into. See **BOMBAY CITY POLICE ACT, § 27.**

40 Bom.L.R. 483 (F.B.).

BOMBAY CIVIL COURTS ACT (XIV OF 1869),

rd Class

—Decree

a Second

laint was

valued at Rs. 200, but the decree passed was for over Rs. 5,000.

Held, that S. 8 of the Bombay Civil Courts Act was

DE, R. 7—

hospitals

Bombay Civil

used it really

cannot be regarded as having reference only to cases

BOMBAY CO-OPERATIVE SOCIETIES ACT (1925), S. 59.

brought to the hospitals by the police themselves. (*Broomfield and Norman, J.J.*) S. D. MARATHE v. PANDRANG NARAYAN. 11 B. 1938 Bom. 770-177 L.C.

BOMBAY (VII OF 1902)

Sale proceeds sent at the institution—Right of.

S. 59 (1) (b), Bombay Co-operative Societies Act, provides for the execution of an award applicable for the recovery of arrears. Where therefore an award under the Bombay Societies Act is executed under S. 5 Act according to the procedure provided arrears of land revenue by the sale of the judgment.

BANK, LTD v HYDERABAD AMIL CO-OPERATIVE URBAN BANK, LTD. 176 L.C. 709-11 R.S. 32- A.I.R. 1938 Sind 157.

S. 59 (1) (b)—Collector acting under—If "Court"—Proceedings under—If stay. See LIMITATION ACT, ART. 18.

BOMBAY COURT OF WARDS ACT (I OF 1905), S. 44 A—Power to call for documents.

S. 44-A gives the Court of Wards power to call for production of documents for the purposes of the Act referred to in S. 4 and other sections of the Act and not only for the purposes of Ss. 15 and 16, and an enquiry under Ss. 15 and 16 is not a condition precedent for the exercise of the power. So also the mere fact that a claimant to the estate has filed a civil suit against the Court of Wards would not deprive it of the power to call for documents under S. 44 A. (*Davis, J.C. and Mehta*)

Judge and of the Assistant Judge in an appeal relating to the amendment of the list of voters are in the capacity of *persona designata* and therefore an application against such orders does not fall under S. 115, C. P. Code. (*Davis, J.C. and Dadaba C. Mehta, J.*)

BOMBAY KHOTI SETTLEMENT ACT (1880), S. 6.

of music—Breach—Ringing of temple bell at time of worship—Offence—Mens rea—Effect of.

A notification was issued by the District Magistrate

What instrument.

Held, that the bell was not a musical instrument, and the mere ringing of the temple bell by the accused did

contrary to the notification in the accused, because both before any one was allowed to enter the temple.

BHIDE, J. 10 B. 454-40 BOM L.C. 10-11 R.S. 1938 Bom 173

BOMBAY HEREDITARY OFFICES (WATAN) ACT (III OF 1874), S. 5—Permanent lease of watan land—Validity

watan lands expressly provided by the Bombay Watan Act. (*Broomfield and Norman, J.J.*) BABASAHEB APPASAHEB v. 40 BOM L.C. 1015- A.I.R. 1938 Bom 492.

S. 5—Scope—If overridden by Bombay Land Revenue Act, S. 217. See BOMBAY LAND REVENUE ACT, S. 217. 40 BOM L.C. 461.

BOMBAY HIGH COURT RULES (APPELLATE SIDE), APP. E. B. VI—Applicability—Land acquisition proceedings—Suit by owners of lands for declaration of invalidity and injunction—Dismissal—Appeal—Valuation—Advocate's fee—Calculation of.

A representative suit by owners of properties which are sought to be compulsorily acquired for a declaration

40 BOM L.C. 531. Ss. 6 and 8—Scope of—Unauthorized transfer of Khoti land by occupancy tenant—Effect—Rights and status of transferee—Possession for over 12 years—Effect of—If becomes occupancy tenant—Right of Khoti

the Khoti of a village. H. D. tenant of the lands sold the same appellants. After D. 1. de lands to the respon

BOMBAY KHOTI SETTLEMENT ACT (1880), S. 9.

21—10—1927, and in December, 1928, passed a rajinama in their favour. The respondents, the admitted Khots of the occupancy holding of D, gave notice to the appellants to quit on 27—12—1929 under S. 84 of the Bombay Land Revenue Code, and on 7—2—1930, sued for ejectment of the appellants and for possession. The appellants pleaded that they had become occupancy tenants of the respondents by possession of the land for over 12 years.

Held, (1) that since the respondents had been in possession of the land for over 12 years, they were entitled to be treated as occupancy tenants.

under a wrong transfer, could not claim to be occupancy tenants merely because they had been in possession for over 12 years and set up adverse possession; respondents, having determined the ten to quit under S. 84 of the Land Revenue Code, were entitled to evict the appellants. (*Rangnagar and Son, J.*) RAMKRISHNA v. BAPURAO, 175 I.C. 618—10 E.B. 564—40 Bom L.R. 390—A.I.R. 1938 Bom 284.

—(I OF 1980, as amended in 1912), S. 9—Scope—If retrospective

The amendment to S. 9 of the Khoti Settlement Act made in 1912 has no retrospective effect. It applies to the case of a ten to 1912 (*Rangnagar and Son, J.*) BAPURAO, 175 I.C. 618—10 E.B. 564—40 Bom L.R. 390—A.I.R. 1938 Bom 284.

40 Bom L.R. 390—A.I.R. 1938 Bom 284.

BOMBAY LAND REVENUE CODE, 1879, S. 217.

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proved to have commenced from a particular year or period. In such a case if the tenant proves that he was on the land, say in 1848, and if it is not shown that his occupation commenced in that year, a presumption could be made that his ancestors were on the land even before that date, though there is no presumption as to the actual date from which the occupation commenced.

proved to be on the land in 1848, three years after the particular year fixed by S. 5, would not be the benefit of the presumption that his from or before 1845—1846. Where establishes the tenant's possession since is no definite evidence that he was on that year, and it is found that there were various kabayats passed by the tenant's ancestors and himself from 1855 to 1901 admitting an annual tenancy, the tenant cannot be held to have established a permanent tenancy under S. 83 of the Bombay Land Revenue Act. Nor can the tenant claim the benefit of S. 5 of the Khoti Settlement Act, when his possession is not shown to

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BOMBAY LAND REV. CODE (1879), S. 217.

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BOMBAY LOCAL BOARDS ACT (1923), S. 8.

S 217 of the Bombay Land Revenue Code, as amended in 1913, has retrospective effect (*Rangnagar and Wadia, JJ.*) *SHRIPAD RANCHANDRA v. TULJARAM RAO*, 177 I.C. 593 = 11 R.C. 101 = 40 Bom.L.R. 461 = A.I.R. 1938 Bom. 372

BOMBAY LOCAL BOARDS ACT (VI OF 1923), S. 8 (b)—Scope—If controlled by S. 14 (3)—Right of person whose name appears in voters' list as finally published to stand as candidate—If can be challenged.

S. 8 (b) of the Bombay Local Boards Act cannot be construed as meaning that if the name of a person

finally published
right of any person
therein, (*Ota*;
CHIMNAJI. I

—Ss 13 and 14 (2)—Construction and scope—Voters' list—Finality as regards the right to vote or to be elected

There is nothing in Ss. 13 and 14 of the Bombay Local Boards Act which provides that the voters' list is conclusive in the sense that no one has a right to

BOMBAY MUNICIPAL BOROUGHES ACT (1925), S. 33.

(as amended by Act XIII of 1935), Ss. 139 (2)—*Applicability—Sub-overseer of Local Board preparing false bills and overcharging Board in course of his duty of taking measurements of work and preparation of bill—Prosecution for—Limitation.*

A part of the duties of a sub-overseer under a Local Board was the taking of measurements of repair and other work done and the preparation of bills in respect thereof. The overseer prepared false bills and overcharged the Board

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LES, R 21—
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UGHS ACT

—Removal or
uction by way

of punishment—Separation of two offices held jointly by one and the same individual and offer of one of them alone to him on lower salary—If covered by S. 33.

The language of S. 33 of the Bombay Municipal Boroughs Act is wide enough to cover the case of removal or reduction of the Chief Officer, which is not by

—S. 33—Construction—Resolution passed by majority of Councillors present at meeting—Majority not amounting to two thirds of the whole number of Councillors of Municipality—Effect—Action taken upon such resolution—If ultra vires.

THE language of S. 33 of the Bombay Municipal Boroughs Act is wide enough to cover the case of removal or reduction of the Chief Officer, which is not by

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tion of—Suit for damages—Measure of damages.

remain in service until he reaches a particular age fixed by the rules under the Act; nor can he claim a gratuity the grant of which is entirely at the discretion of the Municipality under the rules made under the Act. Since

be awarded to him in a suit for damages for wrongful dismissal are wages for the period of notice, *i.e.*, one month's pay. (*Broomfield and Wassoodew, J.J.*) MUNI-

violates the rules of procedure laid down by the law of infringement is disclosed, same in the *d Wassoodew*—*JA v. RAMA*—*74 I.C. 643*—

10 R.B. 477—69 Bom.L.R. 1269—
A.I.R. 1938 Bom. 137.

—S. 68 (1) (d)—Scope—Duty of Municipality—
Cutting off of water supply at night—Destruction of
to delay in getting water to
ity to damages—Tort—Non-

Appellant had a shop within the Municipality of Ahmedabad. The Municipality had, under the advice of a Government expert and owing to shortage of water,

Courts.

damages on the ground that the latter were guilty of a breach of the duty imposed by S. 68 (1) (d) of the

BOMBAY MUNICIPAL BOROUGHS ACT (1925)
S 114.

INDIA, LTD.

II
174 I C

40 Bom. L.R. 111 = A

—S 114 (2)—“Purchase”—
compulsory acquisition.

The word “purchase” in S

174 I C 67—10 B.B. 420 =

A.L. 1938 Bom. 140

—Ss. 123 and 137—Construction and relative scope—Notice of proposed construction—No steps taken by Chief Officer within one month—Right of owner to proceed with construction—Drains constructed for house—Right to demand demolition on the ground of want of sanction or notice.

Where a notice specifying the building sought to be constructed is given, and the Chief Officer of the Municipality has not taken steps within a month in relation thereto, the building owner can proceed with his proposed construction; that is on the basis that the consent

tion can only be ordered after conviction has been

and Divatia, J.) EMPEROR v. DIRAJLAL DALSUKH
RAM.

174 I C. 466—39 Cr L.J. 413 =

10 B.B. 451 = 40 Bom. L.R. 67 =

A.I.R. 1938 Bom. 186.

—S. 129—Construction and Scope—Notice under
—Requirements of validity—Powers of chief officer—

BOM. PREVENTION OF ADULTERATION ACT
(1925), S. 4.

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owners of
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know in the first instance what he is required to do
(Beaumont, C. J. and Wassoodew, J.) EMPEROR v.
TRIKAMLAL KESHAVLAL.

175 I C. 765 =

11 B.B. 5 = 39 Cr L.J. 667 = 40 Bom. L.R. 314 =

A.I.R. 1938 Bom. 303.

—S. 206—Limitation—Starting point—Wrongful
dismissal of Municipal servant—Suit for damages—
Period of six months—When commences to run—Date
of resolution of dismissal or date of actual handing over
of charge.

A suit by a dismissed servant of a Municipality for
damages for wrongful dismissal is not barred by limitation.

A.I.R. 1938 Bom. 187.

—S. 4 (1)—Conviction—Validity.

32 S.L.R. 681 = 174 I C. 685 =

39 Cr L.J. 474 = 10 B.B. 259 =

A.I.R. 1938 Sind 7

—S. 4 (1) (a)—Applicability—Sale to
officer—Offence.

BOM. PREVENTION OF ADULTERATION ACT (1925), S. 4.

An offence under S. 4 (1) (a) is committed in respect of adulteration of public food.
Lobo, J.
 CIPAL C.

—S. 4 (1) (a)—*Liability of sleeping partner.*
 A proprietor of a shop is liable for the sale of adul-

proper that that power should be exercised. The cases in which the Court would grant a request for the issue of a commission to a warrantor would be rare, but there is nothing in S. 4 (4) (b) to prevent the Court asking

Court, and it is only in exceptional cases that the Court should not do so. (*Das*)
 GIRDHARILAL v. EMPEROR
 174 I.C. 542-39 Or

—S. 12 (1)—*Complaint by Honorary Magistrates as plaintiff signed by one Magistrate in the presence of one only.*

In Hyderabad the Magistrate 'B' Bench, are Magistrates of the first class when sitting together as a Bench. When sitting singly they are Magistrates of the second class. Where the complaint was addressed to one Magistrate as such, and the verification of the complaint required the signature of one Magistrate, it was held that the Magistrate was not present sitting singly. (*J. C. and Mehta, J.*)
 LILARAM LADAKMAL v. WADHUMAL.

—S. 13 (1)—*Scope—Summary trial.*

the prosecution case, for time once gone is gone beyond recall. This cannot be regarded as a mere irregularity which can be cured. (*Datta, J.C. and Mehta, J.*)
 LILARAM LADAKMAL v. WADHUMAL.

A.L.R. 1938 Sind 209.

BOM. PREVENTION OF GAMBLING ACT (1887), S. 6.

—S. 11 (2)—*Scope—If mandatory—Absence of*

provisions at the name and place of the holding of the sum-
 mons would be a fatal flaw in the proceedings. All that can be said is that it is an irregularity which can be cured.
 "it is a may be in and"
 "L."
 "209."
 "ACT"
 "trust-"
 "ining"

of—"Gaming"—*Distribution of profits of gaming—When an offence punishable under Act.*

"Gaming", as defined by S. 3 of Act IV of 1887 as amended in 1936, includes various ancillary and access-

the place is the place he dis- g, the Honore

identity of the accused. The purpose of requiring independent evidence corroborating the evidence of the approver is that the Court can be satisfied that he is speaking the truth. It has no other purpose. The amount of that evidence depends upon the circumstances of each

BOM. PREVENTION OF GAMBLING ACT (1887), S. 6.

particular case, the question as to whether it provides

—Ss. 6 and 7, as amended by Bombay Act I of 1886—*Interpretation of.*

Ss. 6 and 7 must be interpreted in a reasonably broad spirit having some fair relation to the realities of the

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He must judge and be judged by all the surrounding
circumstances and the
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respect that when sh;
them are considered of sufficient importance by the

used to visit his village where he had a house several
possession a substantial sum of money which, it was
ls of gaming and which
for the purpose of dis-
upon him certain chits
satta chits which were

Dadiba, C. Mehta, J.) EMPERO

—Ss. 6 and 7, as amend
of 1886—*Scope and effect—Pres*
When to be raised—Duty of Cou

that gambling is going on in a particular house in
American Futures, a Sub Inspector finds a number of

BOM. PUBLIC CONVEYANCES ACT (1920), S. 24.

C. 7 Where in such a
count of their presence
which the Court can
interfere in revision
J. C. and Dadiba C.

Mehta, J.) EMPEROR v. ALI MOLO

A.I.B. 1938 Sind 228.

—S. 12 (a)—*Construction and scope—Offence—*
Essentials of—Conviction—Proof requisite—Mere
among—Sufficiency—Accused
money, proceeds of gaming
place—Liability to conviction
essity.

It could be a remarkable deception from a person

used to visit his village where he had a house several

possession a substantial sum of money which, it was
ls of gaming and which
for the purpose of dis-
upon him certain chits
satta chits which were

since under.

To convict an accused under S. 24, it is not sufficient

BOMBAY REGULATION (IV OF 1827),—S. 26—
Law to be applied in the trial of suits. See **CONFLICT OF LAWS.**
39 Bom !

BOMBAY SURVEY AND SETTLEMENT
(I OF 1865), S 38—*Kabulayat taken by*
from managing khot—Effect—Right of k
faida in kind.

as he may be advised against Government, or approach Government to get the kabulayat charged but until that is done, the managing khot cannot go beyond the terms of the kabulayat so long as it stands. If the kabulayat entitles the khot to recover faida in kind, he can take it in kind, and the tenant cannot resist the demand and insist on payment in cash (Rc

NARAYAN D. AMIRUDDIN SHE
11 E.B. 3c

BROKER. See **PRINCIPAL AND AGENT—BROKER.**
BUDDHIST LAW (Burmese)—Adoption—Kettima
form—Onus.

BUDDHIST LAW (Burmese).

oral, document-
all the different
that intention and
as being consis-
tent with adoption
(.) MA PU TU
g. 369.
adoptive

n these
adoptive
parents or that if they do not do so the proof of adop-
tion should be deemed incomplete, yet in the case of
young children it is a normal characteristic of adoption
that the up-bringing of the children adopted should be
undertaken by the adoptive parents and where this is
not done, one must look carefully at the surrounding

A.I.R. 1938 Rang. 381.
(Burmese) — Adoption — Proof — Kettima
Daughter.

finda, that the evidence was sufficient to establish the

of adoption—Change of family.

Kettima adoption may be proved either by evidence of a ceremony on a particular date of giving and taking in adoption, or by evidence of a course of conduct which cannot be explained on any other basis than that the children had been adopted with a view to inherit. The

174 I.C. 224=10 E.R. 393=A.I.R. 1938 Rang. 40.

**(Burmese)—Dedication of property to nun-
Gifts—If exempted from operation of S. 123 of T. P.
Act.**

Buddhist religious gifts are not excepted from the operation of S. 123, T. P. Act, since that Act has been

(Burmese)—Adoption—Kettima and apattha
forms—Distinction—Intention—Proof—Duty of a
Judge.

(Burmese)—Family living in patriarchal state
—All working and living together—Members seeking
service and remaining separate—Returning after

established upon oral evidence alone. All that the money, and where one member went out and found work

BUDDHIST LAW (Burmese)

and remained apart, but came back on his father's death and continued his father's business and had a separate banking account of his own as distinct from that of the family, *prima facie* his banking account would be his personal property until the contrary is shown. (*Baguley and Shwe, J.J.*) DAW KYIN v. MA HLA YI. 176 I.C. 809=11 R.R. 89=

A.I.R. 1938 Rang. 71.

—(Burmese)—Gift—Validity—Gift affecting inheritance.

his act in making a gift, owing to the circumstances under which it was made or the conditions attached thereto are such as to affect the succession to, or inheritance of, his property after his death, Buddhist law must be resorted to, to arrive at a decision as to whether his

subject and dependent on their father's death. (*Mostly and Dunkley, J.J.*) MA E NYUN v. DAW NA GET. 178 I.C. 200=A.I.R. 1938 Rang. 293

—(Burmese)—Law applicable—Duty of Courts.

The task of the Courts of British Burma has been, and still is, to deduce from the *ad hoc* decisions compiled in the Dhammathats general principles of the common law of Burma which are in accordance with the habits and customs of the Burman of today (*Roberts, C.J., Dunkley and Braund, J.J.*) MAUNG THEIN v. MAUNG NYO SEIN. A.I.R. 1938 Rang. 449 (S.B.).

—(Burmese)—Marriage—Dissolution by desertion—Allegation of adultery on part of wife—Wife, if

BUDDHIST LAW (Burmese).

of the intention to enter into married life must be clear. Clandestine acts of sexual intercourse do not by themselves establish marital relationship and where there is no regular cohabitation under the same roof and the couple who resort to each other for purposes of intimacy are thought by some to be engaged, and by others to be cousins or mere friends, proof of marriage has not been established by reputation. Moreover, as it takes two persons to make a contract, in order to prove marriage there must be evidence not merely of desire by one per-

MYINT.

175 I.C. 418=39 Cr.L.J. 571=

10 R.R. 490=A.I.R. 1938 Rang. 115.

—(Burmese)—Marriage—Validity—Hindu becoming Buddhist, marrying according to customs of Buddhists.

174 I.C. 558=10 R.R. 414=

A.I.R. 1938 Rang. 51.

—(Burmese)—Mortgage—Equitable mortgage by Burman—Burman's wife dying leaving son—Decree passed on mortgage—Burman marrying again—Suit by son for declaration that mortgage decree did not affect his mother's share—Second marriage, if affects mortgagee's rights.

An equitable mortgage was created by a Burman. His wife died afterwards leaving a son. A mortgage decree was passed. The Burman afterwards married again and the execution of the mortgage decree was stayed pending the decision of a suit which was brought by the son for a declaration that the mortgage decree

ty. mortgagee the decree even if the her death, e property his interest ured to the and A.I. UNG CHIT R.R. 94= Rang. 108. t mont—

talk which it entitled at the latter the pogga-coof of any misconduct on his part or of such behaviour as would render his eviction from the kyaungtaik desirable. The sanghika property does not belong to any particular person or group or section. It partakes of the nature public religious property. When a kyaung bec

asked to some form of entertainment in order to signify the occasion, and where this is dispensed with, evidence

Y. D. 1938—10

BUDDHIST LAW (Burmese).

vacant, there is nothing wrong in a peaceably in to dwell in the house (Dunkley, J.) U EIR

—(Burmese)—

to share when one parent is surviving.

In the absence of kettima or natural children, the apattha child is entitled to inherit in the estate of his adoptive parents when both parents are dead, but he has no right to share in the estate of the deceased parent when the other survivor parent is living. (*Mya Bu and Mackney, J.J.*) MA SINT v. MA MA GALE.

A I.R. 1938 Rang. 451.

—(Burmese)—Succession—Burmese male marrying twice—Both wives living simultaneously—Child from former marriage—Right to inherit to step-mother.

When a Burmese Buddhist male had contracted two marriages and both wives had been alive at the same time, the children of the first marriage in point of time whose parents both predeceased their step-mother, are heirs of their step mother in respect of her separate property, when there are no children or direct descendants of the second wife. (*Roberts, C. J. Dunkley and Braund, J.J.*) MAUNG THEIN v. MAUNG NYO SEIN.

A I.R. 1938 Rang. 449 (S B)

—(Burmese)—Succession—Death of one parent and re marriage of the other—Rights of children taking a share—If they retain further claim in respect of future property—Widow and widower having children remarrying—One of the sons of widow taking his share—Right of the other son to share in the lettelpwa or Anapazon property.

Under the Burmese Buddhist Law a child who takes his share in the estate of his parents after the death of one parent and upon the remarriage of the surviving parent ceases to have any further claim in the remainder of such estate and in the property acquired subsequent to the remarriage of the surviving parent in the event of the surviving parent leaving a widow or widower or daughter, married D, a widow. Their respective previous marriages and also some payin property.

as one
were
of D's

re-marriage after the death of their father. After D's death the representatives of M brought a suit for half of the lettelpwa or Anapazon property of U and D.

Held, that it was not logical that, because S or his representatives had taken away his share in the property of D's previous marriage and S thus dropped out of the new family, the share to which S or his representatives

Anapazon property of U and D (*Mackney, Mya Bu and Spargo, J.J.*) MAUNG PO ZAW v. MAUNG AN.

A I.R. 1938 Rang. 376.

—(Burmese)—Succession—Dhammakats—Former marriage—Meaning.

Two contemporaneous or overlapping marriages may be described as 'former' and latter, the 'former' being that which was contracted earlier and the latter being

BURDEN OF PROOF.

Preference—Laws of rule that inheritance should not ascend when it can descend.

descend, still operates in competition between relations of full blood and those of the half blood of the same degree of relationship to the deceased. (*Mya Bu, Offg. C. J. and Mackney, J.J.*) MRS KIRKWOOD v. MAUNG SIN.

174 I.C. 603=10 R.R. 412=

A.I.R. 1938 Rang. 74.

—(Burmese)—Succession—Share of orasa son by first wife on father's remarriage.

Where after the death of his wife the widower marries a second wife, his orasa son by the first wife is entitled to his share in the estate as it existed at the time of remarriage. (*Baguley and Mosely, J.J.*) A. L. A. CHETTYAR FIRM v. MAUNG PO TAW.

1938 Rang L.R. 583=177 I.C. 435=11 R.R. 128=

A.I.R. 1938 Rang. 250.

—(Chinese)—Letters of administration—Estate of

a non-Buddhist, that is, whether the succession to his estate is governed by the Chinese Customary Law or by the Succession Act, for in either case the proper person to obtain letters of administration to his estate is his widow, and other persons having claims to the estate

under this law the son is entitled to the whole of the deceased's estate to the exclusion of daughter. (*Mosely and Dunkley, J.J.*) OON CHAN v. KHOO ZUN.

177 I.C. 501=11 R.R. 154=

A.I.R. 1938 Rang. 254

BURDEN OF PROOF—Encroachment—Suit by owner of land against adjoining owner—Proof of disturbance of boundary marks—If essential—Measurements and area—If conclusive.

is of little value, an argument based on area is of even less value, because there may have been an encroachment in any direction or in any part of the plot. The

1938 R.D. 71=1938 A.I.R. 56=

BURMA LAND AND REV. ACT (1876), S. 45.

deceased owner, served on care-taker of property—Validity of sale.

Where a notice of demand under S. 44 of the Burma Land and Revenue Act for Municipal taxes, which was addressed to an owner of property who had been dead was served on the care-taker of the property, there was no valid service of the notice upon any person liable to pay within the meaning of that section. The care-taker

It is not the owner that signs a revenue officer signs it and he signs the sale that has taken place; and

10 R R 398—A.I.E. 1938 Rang. 55.

—S. 45—Sale under—What power—Revenue officer signing sale certificate in wrong form—Effect of.

Where the attachment for sale sale proclamation is also under; under that section, and it would title and interest of the owner. 7 some months the revenue officer in the wrong form cannot alter *(Mya Bu, Offg C J, and a)* HLAING v. CHETTYAR FIRM. 174 I.C. 260=

10 R.R. 398—A.I.E. 1938 Rang. 55.

—S 56—Scope—Jurisdiction of Civil Courts.

The prohibition under which Government is a p regarding the right to occupy duals. *(Roberts, C J, and Dunkley, J.)* MAUNG THAUNG v. SHAIK ABDUL GANI. 1938 Rang. L.R. 603.

BURMA MUNICIPAL ACT (III OF 1898), S. 62—

Find out what the hypothetical rent may be. A test based upon the actual figures of profit applied where a hereditament itself profit making characteristic, enabling out from other classes of hereditaments

LOCAL HIGH COURT INSOLVENCY RULES (1910), R. 79.

directory and not a mandatory significance. Hence a breach of this rule does not make a contract void.

Per *Sharpe, J.*—The rule was either under S. 71 and beyond the powers of the Local Government to make or at least it was only directory if made under S. 229 (f) and it could not in any way interfere with the right acquired by third persons under any contract entered into with the Municipality, even though it had entered into it otherwise than in accordance with the directions given in the rule. *(Roberts, C.J.)*

Legality.

1938 Rang. 55—A.I.E. 1938 Rang. 55.

order there the Training *(Mistry, J.)* L.J. 697= Rang. 228, ELIS ACT

Where a person is convicted of an offence of managing a brothel under S. 11 (a) of Burma Suppression of Brothels Act, a sentence of fine or in default imprisonment is entirely inadequate in such a case. To stamp out of this kind it is proper that the offender should go to prison. *(Roberts, C.J.)* M ULLA v. 174 I.C. 885=38 Or L.J. 494=

10 R R 439—A.I.E. 1938 Rang. 107.

BURMA VILLAGE ACT (IV OF 1907), S. 12— Offence under—Villager not paying thatameda tax—Order to him by headman to appear at Township office—Disobedience of order.

A.I.E. 1938 Rang. 180. SAND

defect les and

CAL. HIGH COURT RULES (ORIGINAL SIDE)**Ch. XIX, R. 1.**

rency Rules on the ground that it was filed out of time, does not amount to the shutting out of evidence or the preventing of the debtor from giving any further evi-

of the Original Side Rules is to require

chridge, J.) MONI SETHANI v. RADHA KISSEN

42 C.W.N. 601.

—Ch. 38, R. 33—Time for filing written statement
—Power of Court to extend—Defendant not asking for
extension within period fixed by summons

R. 33 of Chap. 38 of the Original Side Rules gives the Court power to extend the time for filing a written

CALCUTTA IMPROVEMENT TRUST.

174 I.C. 756=10 R.O. 712=A.I.R. 1938 Cal. 43.

—Ss 35 154 and 160 (c)—Chairman's power to
institute legal proceedings—Delegation of—Legality

The delegation by the Chairman of his power under S. 154 of the Calcutta Improvement Act to institute legal proceedings is a direct contravention of the provi-

CALCUTTA MUNICIPAL ACT (1923), Sch. I.

CALCUTTA MUNICIPAL ACT (III OF 1923),
Ss. 129 to 142—Applicability—Liability to assessment
not admitted.

Ss. 129 to 142 of the Calcutta Municipal Act pre-
s which are the
assessable to the
have reference
assessment and
to the quan-
in which it has
cases
consoli-
GAR-
IPORA-
N. 789,

—B. 205—Division of assessment of premises under
(1)—Whole of premises, if subject to statutory

e division of assessment of the premises is made
under the provisions of S. 133, Cl. (1) of the Calcutta
Municipal Act, the whole of the premises so affected
remain subject to the statutory charge. (*Lort Williams,*
J.) CORPORATION OF CALCUTTA v. BON BEHARY
SHAW. I.L.R. (1938) 2 Cal. 209=178 I.C. 89=

42 C.W.N. 582=A.I.R. 1938 Cal. 581.

—S. 359 (6) and (7)—Particular portion of bustee
and declared non-bustee—Ruster standard plan with

the bustee may be
standard plan with
is for the Corpora-
f anything of the
ed or varied. The
S. (6) of S. 359
ab-S. (7) has been
of a street, project-
ent of which affects
sections declared
s 'de-busteed', i.e.,
earlier sub sections

of S. 359, the practical question arises as to how far, if
at all, the alignment of the projected street should be
varied (*Ameer Ali, J.) KISSORY LALL v. CORPO-*
RATION OF CALCUTTA A.I.R. 1938 Cal. 870.

—Sch. I—Definition of Calcutta—'Fort William'
—Meaning of.

The words 'Fort William' in Sch. I of the Calcutta

C. P. DEBT CONCILIATION ACT (1933), S. 4.

The Debt Conciliation Act lends itself to abuse and fraud very easily, and must be very strictly construed and vigilantly applied by the special authority created by the Act. The Debt Conciliation Boards should therefore be alert and should first satisfy themselves, about the bona fides of every application for settlement of debts. (*Niyogi, J.*) **TIKA RAM v. GANPAT SAHAI**, 1938 N.L.J. 17 = A.I.R. 1938 Nag. 373

—S. 4—*Fraud on Court—Purchase of land for purposes of jurisdiction—Parties admittedly agriculturists*

or purchase a statu upon the Court. (*Niyogi, J.*) **BALWANT v. TUKARAM**, 1938 N.L.J. 235

—S. 4—*Right to apply to under—"Debtor"—Person earning livelihood as pleader's clerk for many years—Acquisition of tenancy for purpose of application—Right of such person to apply*

A person who earns his livelihood mainly by agriculture is a debtor entitled to apply under S. 4 of the C. P. Debt Conciliation Act. It is not merely necessary that he should have tenancy or proprietary land but also that it should be the main source of his maintenance. A person who has been earning his livelihood as a pleader's clerk for many years and as a private servant and who acquires some tenancy land only to enable himself to apply for settlement of his debt is not a debtor entitled to apply for settlement of his debt. (*Niyogi, J.*) **TIKA RAM**, 1938 N.L.J. 17 = A.I.R. 1938 Nag. 373

—(as amended by Act XV of 1936), ss. 4 A, 8 (1) and 11 (2)—*Application for conciliation for debt—Notices issued to creditors—Creditors forming*

C. P. DEBT CONCILIATION ACT (1933), S. 8.

—S. 7-A—*Scope—Retrospective operation—Order of Conciliation Board discharging debt before introduction of S. 7-A—Jurisdiction of Board—If can be questioned in Civil Court in execution.*

S. 7-A of the C. P. Debt Conciliation Act has no retrospective operation. An order of the Debt Conciliation Board discharging a decree-holder's debt before the introduction of S. 7-A into the Act, can therefore be challenged by the decree-holder as being without jurisdiction in the Civil Court executing the decree. (*Niyogi, J.*) **TIKA RAM v. GANPAT SAHAI**, 1938 N.L.J. 17 = A.I.R. 1938 Nag. 373.

Delivery of movables to avoid attachment of judgment debt under S. 8 of the Act—Found to have knowledge of proceedings—Debtor to restoration of movables.

Where to avoid an attachment the judgment debtor delivered certain movables to the decree-holder and later on the debt was discharged under S. 8 of the Debt Conciliation Act, the proceedings of which, the decree holder was found to be cognizant of, the judgment-debtor is entitled to the restoration of the movables. (*Niyogi, J.*) **AZIMMIYA v. NAYNYA**, 1938 N.L.J. 283.

—S. 8 (1)—*Notice under—Creditors who are omitted in the application under S. 4—Position of—Right to a decree.*

The notice contemplated in S. 8 (1) of the C. P. Debt Conciliation Act, presupposes that the debtor has disclosed the names of all his creditors. To construe that such a publication affects unknown creditors as well as to creditors whose names are omitted under S. 4. The notice is to be treated as being lying on the Conciliation Act. They full decree. (*Niyogi, J.*)

HAJI MOHAMAD v. HARBALI, 1938 N.L.J. 141.

—S. 8 (1) and (2)—*Ambiguity in notice under*

the service of within which and the two and where a notice it was time and that be in effect a the proviso to for S. 8 (2) to be discharged. **HAJI MOHAMAD v. HARBALI**, 1938 N.L.J. 296.

of the Board

Held, that the action of the Board was without juris-

There was a decree in favour of two persons. Though the debtor applied to the Debt Conciliation Board for the settlement of his debt.

cedure followed by the Board and

respect of the minor's share. (*Bose, J.*)

HAJARIMAL v. GOVINDA TUKARA

174 I.C. 952 = 10 R.N. 429 = A.I.R. 1938 Nag. 373

C. P. DEBT CONCILIATION ACT (1933), S. 9

has been declared satisfied. (*Gruer*,
v. LALLOO DOMA.

—S 9 (3)—Order under—Effect

The effect of an order under S 9 is to validate the transaction but merely to shut out certain documents from evidence. Where therefore an order is made under S. 9 (3) excluding a mortgage deed from

C. P. LAND ALIENATION ACT (1916), S. 16.

ice, the
s judg-
WAMAN
J. 229.

—S. 21—Certificate produced after confirmation of sale in execution—Effect of.

By virtue of S. 21 of the C. P. Debt Conciliation Act

—S. 16—Jurisdiction—Civil Court sitting in execution—Power to question jurisdiction of Debt Conciliation Board to entertain application under S. 4.

A Civil Court sitting in execution has power to inquire into the question whether the Debt Conciliation Board had jurisdiction to entertain and hear an application under S. 4 of the Debt Conciliation Act made by a person who was not an agriculturist (*Niyogi*, J.)

TIKA RAM v. GANPAT SAHAI 1938 N L J 17—
A I R 1938 Nag 373.

—S. 21 (as amended by Act XIV of 1935)—Amendment, if retrospective.

Looking at the question as a whole, it is clear that the amendment of S. 21 by Act XIV of 1935 is not merely procedural, but that it affects substantive rights and so in the absence of express words to that effect, it ought not to be applied to pending proceedings. (*Stone*, C. J. and *Bose*, J.) GANESH PRASAD v. GOPAL

1938 N L J 101.

—S. 21—Applicability—"Debt"—Meaning—Joint decree against several persons—Application under S. 4, by some only—Sale of property of others in execution—Confirmation of—If can be stayed.

"Debt" in S. 21 of the C. P. Debt Conciliation Act means a debt of the debtor who a Where in the case of a joint decree sons only one of them applies under come into operation, so as to stay the execution sale of the properties of the other judgment debtor who have not so applied under S. 4 (*Niyogi*, J.) MADHO v. KANCHANDRA

178 IC 268=1938 N L J 60—
A I R 1938 Nag 273

—S. 21—Applicability—Insolvency proceedings, if could be stayed—Other proceedings in S. 21, meaning of.

Proceedings in insolvency cannot be suspended under S. 21 of the C. P. Debt Conciliation Act. An insolvent after adjudication, though he might continue to be debtor for the purposes of those proceedings, cannot be a debtor for the purposes of the Debt Conciliation Act, as his property is vested in the insolvency Court which

Validity.

Under S. 21 of the Debt Conciliation Act, the Civil Court is not bound to stay proceedings until it has been brought to its notice that there are proceedings pending before the Board by production of a certificate before it. In the absence of such certificate, it is open to the Court to continue the proceedings. Where, therefore, such certificate is not filed in the Court until the property has been sold in execution of a decree, the subsequent confirmation of the sale is not barred by any provision in the Act, and both the sale and confirmation of the sale are valid. (*Pollock and Digby*, J. J.) MAHTABSINGH v. KRISHNACHANDRA.

172 IC 592=A I R 1938 Nag 109.

—S. 21—Scope—If controls O. 21, R. 92, C. P. Code—"Proceedings"—Meaning of—Sale in execution held prior to debtor's application under S. 4—Confirmation of sale—If precluded.

The word "proceedings" in S. 21 of the C. P. Debt Conciliation Act must be understood as referring to proceedings in which the creditor and debtor, i.e., the decree holder and the judgment debtor alone are concerned, and cannot be extended to cover the case of an auction purchaser in execution. The term is not com-

preclude the executing Court from confirming an execution sale held prior to an application made by the debtor under S. 4 of the Debt Conciliation Act (*Niyogi*, J.)

MADHO v. KANCHANDRA 178 IC 268=1938 N L J 60=A I R 1938 Nag 273.

CENTRAL PROVINCES LAND ALIENATION ACT (II OF 1916)—Scope of—If prohibits only sale and not attachment

If properties cannot be sold then it cannot be attached. The Land Alienation Act when it prohibits sale prohibits attachment also (*Bose*, J.) DEPUTY COMMISSIONER, HOSHANGABAD v. FIROZ KHAN.

176 IC 163=11 RN 38=A I R 1938 Nag 504

—S. 16—Money decreet against member of an

Prohibition against sale of his property is not an end in itself, but is only an

So it follows that where the Court is

execution sale.

C. P. LAND ALIENATION ACT (1916), S. 25.

nik, J.J.) DAULAT SHAH BAPU v. SARASWATI BAL.
173 I.O. 877.
10 N N. 327 = A I.R. 1938 Nag 281.

—S. 25—Object of—Presentation of appeal to High Court by the Deputy Commissioner in person, if necessary

The object of S. 25 of the C. P. Land Alienation Act is to bring to the notice of the Court an illegality in its decree or order and thus to save the property of certain class of persons. The Act does not contemplate that rules of procedure with reference to presentation, etc., are to be followed and as such all that is necessary is that the application under S. 25 (3) should arrive either by post or by personal presentation. It does not matter how it is presented.

—S. 25 (2)—Right to apply under when arises—Simple money decree—Attachment—Effect.

In the case of a simple money decree, the order of attachment involves permanent alienation, mortgage or lease of land. So copies of such order should be sent to Deputy Commissioner under S. 25 (1) of the Land Alienation Act. If it is not sent, he can under S. 25 (2), apply within two months of his being informed of such order, the manner of his obtaining it is immaterial (*Boss, J.*) DEP
HOSHANGABAD v. FIROZ KHAN
11 R.N. 38 =

CENTRAL PROVINCES LAND REVENUE ACT (II OF 1917)—Revision—Time—Long delay—Charge in law and ignorance as to forum of revision—If grounds of for existing.

A delay in filing a revision cannot be excused on the ground of either a change in the law or ignorance on the part of the party as to the proper forum for the presentation of the revision in Collector's cases. (*N. J. Roughton, F.C.*) KISAN v. ADKU.
1938 N.L.J. 127.

—S. 49 (1)—Duty of Revenue Court under—Possession—Meaning and nature of.

Where an applicant for mutation before a revenue Court has obtained lawful possession and title against the recorded proprietor, he is entitled to mutation, and the revenue Court is bound under S. 49 (1) of the Land Revenue Act to record another party owns the lawful possession illegally which the applicant is not recognised by the revenue GOFIDAS v. SETH MISHR.

—S. 75 (1)—Muzi

revenue was foregone because the land was taken by a member of the proprietor's family in lieu of a proprietary share. At the next settlement the settlement officer recorded that it should continue in perpetuity "so long as the land remains in their own family and is not alienated." The *muzafdar* transferred the land to a stranger by way of a usufructuary mortgage.

Held, that the conditions of the *muzaf* had been

O. P. LAND REVENUE ACT (1917), S. 169.

in possession, and the proprietor would be entitled to collect the revenue assessed upon the land.

Held, further, that on the owner resuming possession by redemption, the *muzaf* would revive. (*Greenfield, F.C.*) SETH MEGHRAJ v. KASHIRAM.
1938 N.L.J. 52.

—S. 75 (3)—Reference under by Civil Court—Revenue Courts' power to question propriety of.

Under S. 75 (3) of the C. P. Land Revenue Act, when a reference is made by the Civil Court, the Revenue Courts must act upon it. It is not open to them to say that the reference is improper and that the point upon which the reference has been made is one to be decided by the Civil Court itself (*Greenfield, F.C.*) SETH SHIRAM.
1938 N.L.J. 52.

—S. 128—Sale for arrears of land of notice to mortgagee not in possession—Assigns in S. 125, meaning of.

A sale for non-payment of arrears of land revenue is not bad for failure to conform to the requirements of S. 128 of the C. P. Land Revenue Act, simply because a notice of demand had not been served on the mortgagee of the village as a defaulter. S. 125 in stating who are defaulters has included the 'assigns' of a person with whom the settlement was made, but by an explanation, has made it plain that 'assigns' includes a mort-

—S. 138—Sale proclamation in terms of—Sale, if free from encumbrances—Presumption.

Under S. 138 of the Land Revenue Act, sale free of encumbrances is the rule and sale subject to encumbrances is an exception. When a Deputy Commissioner, signs a proclamation in terms of S. 138, it is unnecessary to pass an express order that the sale is to be free of encumbrances (*Pollock and Niyogi, J.J.*) SURAJ-DEEN v. ISHWARI PRASAD.
I.L.R. (1938) Nag. 550 = 1938 N.L.J. 342 =
A.I.R. 1938 Nag 554.

—S. 157—Failure of co-sharer *lambardar* to pay *Sadar lambardar*—Payment by him to Government—Recovery under S. 157—Remedy of patti *lambardar*.

Where a patti *lambardar* who held her share free from assessment, failed to collect and pay the land

bardar for her share of village profits.
1.) THAKURSINGH v. M.T. PARWATIBAI.
1938 N.L.J. 292 = A.I.R. 1938 Nag 490.
169 (1) (b) 220 (n)—Order to file civil suits within six months—Suit filed beyond that period voidable.

Where under an order under S. 169 (1) (b) of the C. P. Land Revenue Act a party is asked to file a civil suit within six months but he fails to do so and files it beyond that period the Civil Court cannot entertain the suit, it being barred under S. 220 (n). Such party has to face the consequences under S. 169 (2) (d) and take his chance before Revenue Court (*Stone, C. J. and Puranik, J.*) MADHORAO DINKARRAO v. LAXMI-
176 I.O. 952 = 11 R.N. 95 = 176 I.O. 952 =
A.I.R. 1938 Nag 241.

—S. 169 (1) and (b)—Partition—Party asked to suit within six months—Case kept pending—

C. P. LAND REVENUE ACT (1917), § 187.

Order sent to Deputy Commissioner for information—Order of Deputy Commissioner asking case to be filed—Which is the operative order.

In a partition proceeding before a competent Sub divisional Officer, he passed an order under S. 169 (1) (d) as follows: "A is asked to establish his rights in Civil Court by filing suits within six months from this date. Till then the case be kept pending. Record forwarded to Deputy Commissioner for information." Deputy Commissioner endorsed on this as follows: "Case need not be kept pending so long. It be filed. Parties can re open it in due course." Question was if Deputy Commissioner's order was final or that of the Sub divisional Officer's and did the superior officer's endorsement convert the Sub-divisional Officer's order from S. 169 (1) (d) to S. 169 (1) (a).

Held, that the order of the Sub divisional Officer under S. 169 (1) (d) was final and that the Commissioner to whom the order was sent for had no right to vary it in any way so as under S. 169 (1) (a), as the order was sent to him not by way of appeal or revision but in his administrative capacity only for information and the endorsement by Deputy Commissioner was his administrative act. (Stone, C J, and Purandhar, J.) MADHURAO DINKAR RAO v. LAXMIBAI. 176 I.C. 862-11 E.N. 95- A.I.R. 1938 Nag 241.

—S. 187—*Lambardari Rules*—Rr. 11 (1) (b) (u) and 11 (1) (b) (u)—*Scope of*.

The qualifications for lambardarship laid down in

—Ss. 187 and 188—*Scope of—Respective duties of lambardar and sadar lambardar.*

S. 187 of the C. P. Land Revenue Act, lays a primary responsibility on the sadar lambardar to collect the land revenue from the lambardars and not to trans-

much of the land revenue as may be payable through him (Pollock J.) THAKURSINGH v. M.T. PAR WATIBAI. 1938 N.L.J. 292-A.I.R. 1938 Nag 490.

—S. 192—*Lambardar or mukhaddam—Fixing of remuneration under S. 192—Right of period anterior to date of such fixing.*

In a suit for village profits, a lambardar is entitled to claim whether as plaintiff or defendant, remuneration for his services for prior to the year in which his remuneration fixed by the Deputy Commissioner under the provisions of S. 192 of the Land Revenue Act as are within the period of limitation (Stone, C J and Bose, J.) MAHA DEO v. JANARDAN. I.L.R. 1938 Nag 509-1938 N.L.J. 448

—Ss. 202 and 220—*Bar of jurisdiction of Civil Court—Scope and extent*

S. 220 of the C. P. Land Revenue Act bars a Civil Court from entertaining any suit with reference to any question connected with or arising out of the powers under S. 202. Where a plaintiff seeks to obtain damages for the breaches of certain conditions in a contract with reference to the lease of his forest, it is not a

C. P. LOCAL FUND AUDIT ACT, S. 10.

matter which the Revenue authority is empowered to decide under S. 202. The mere fact that the same set of facts give rise to a civil action for damages as well as to revenue proceedings under S. 202 does not confer jurisdiction upon the Revenue authorities to usurp the functions of Civil Courts. (Bose, J.) JAMSHED v. KUNJILAL. 1938 N.L.J. 392-A.I.R. 1938 Nag 530.

—S. 203—*Malguzar mortgaging his proprietary rights and house in abadi—Foreclosure—Mortgaged house, if exempt from attachment—Mortgagor's right to house site—Limits.*

A malguzar mortgaged his village which included his *air* lands. He also mortgaged his house in the *abadi*.

the *abadi* and as such the house was not attachable,

Held that the mortgagor was only entitled to a house site of reasonable dimensions in the *abadi* as a tenant and not to any particular site or house and hence the house was attachable. (Bose, J.) RAMADHIN v. SHEODUTT. A.I.R. 1938 Nag 544.

—S. 203—*Obtaining of site for building house to live in—Right of transfer—Presumption.*

Where a man obtains land in order to build a residential house in a growing town, the ordinary presump-

—S. 418 (4)—*Deputy Commissioner's power to refer to Civil Court for making award—Limits.*

S. 218 (4) of the C. P. Land Revenue Act requires that the compensation shall be calculated by the Deputy Commissioner (or if necessary by the Civil Court) as may be necessary with the provisions of the Act. It does not require that the compensation be strictly followed. A of the question of the his powers. (Roughly, CHOUHSEY MADAN MOHAN. 1938 N.L.J. 328

—S. 218 (5)—*Order to furnish security prior to entering on land—If legal.*

S. 218 (5) of the C. P. Land Revenue Act requires that the Deputy Commissioner must be satisfied that

CENTRAL PROVINCES LAND REVENUE MANUAL VOL. II, Page 43—Instructions in—If has the force of law.

The Central Provinces Land Revenue Manual contains mere executive instructions and they have not the force of law. Failure to observe the instructions does not amount to an illegality so as to invalidate a sale. (Pollock and Niyogi, J.J.) SURAJDEEN v. BHOWARI PRASAD. I.L.R. (1938) Nag. 550-1938 N.L.J. 342-A.I.R. 1938 Nag 554

CENTRAL PROVINCES LOCAL FUND AUDIT ACT, Ss. 10 (1) and 8 (D) (c)—Surcharge—Notice—Conditions necessary.

C. P. LOCAL FUND AUDIT ACT, § 14.

Before a notice can be served under S. 10(1) of the C. P. Local Fund Audit which fall under cls. (b) and (c) can be satisfied that the loss has been caused by gross negligence or misfeasance (*Bose, J.*) **ATMARAM v. P.** 177 I.

A.I.R. 1938 Nag 422.

—§ 14—Application to Dt. Judge—When Procedure to be followed.

When a person is surcharged under S. 10(1) under S. 14 the right to apply to the Dt. Judge. The

G. P. MONEY-LENDERS ACT (1934), S. 11.

—S. 73 (2)—Limitation under—Computation of

at one time deprived of it. In addition, a new accrue in his favour. In pursuance of a resolution, the Chairman of the District Council, an employee inducted without the sanction of the Deputy Commissioner. The Deputy Commissioner's order was upheld by the Commissioner.

decide one, and say that all are the same. (*Stone, C. J. and Bose, J.*) **ATMARAM v. ACCOUNTANT-GENERAL, C. P.** 177 I.O. 902=1938 N.L.J. 220=

A.I.R. 1938 Nag. 422.

CENTRAL PROVINCES LOCAL SELF-GOVERNMENT ACT (IV OF 1920), S. 23 (1)—Applicability to any market

S. 23 (1), C. P. Local Self-Government Act, applies to any market which corresponds to the definition of market given in S. 2 (2) of the Act whatever it may happen to be called. (*Bose, J.*) **KRISHNARAO GOPALRAO v. SECRETARY OF STATE.** 176 I.O. 736=

11 R.N. 75=A.I.R. 1938 Nag 188.

—S. 23 (1) and (3)—Rights of owner of market—Notification under S. 23 (1) of C.P. Local Self Government Act—Rights of owner, if affected—Test—Remedy.

In general, the owner of a market has a right to levy fees and tolls which are usually known as stallage, piggage, pennage and rent and no one can erect a stall on any portion of the land or otherwise claim exclusive occupation of it without a license from the owner. But these rights can be curtailed in various ways one of which is custom. The word 'control' as used in connection with market means to regulate or to restrict, but

District Council. The employee filed a suit challenging the legality of the order of the Chairman as well as that of the Minister for Local Self-Government and prayed for damages for wrongful removal from service:

Held, that the period of limitation, viz., six months prescribed by S. 73 (2) of the C. P. Local Self-Government Act must be computed from the date of the Minister's order as the cause of action for the suit arose on the day on which the Minister passed his order which had the effect of making the Chairman's order final and effective. (*Niyogi, J.*) **DISTRICT COUNCIL OF SEONI v. NANHARIYARAM SHARMA.**

A.I.R. 1938 Nag. 499.

CENTRAL PROVINCES LOCAL SELF-GOVERNMENT ACT (XII) 1937, S.

"loan"—Mortgage—Preliminary decree and final decree prior to amendment—If can be re-opened—Retrospective operation.

As from 19-3-1937, the C. P. Money-Lenders Act (as amended in 1937) applies to mortgage transactions made with money-lenders, as a mortgage would clearly fall within the term "loan", although the Act of 1934, before its amendment was not applicable in a loan

when the suit was brought. The Amending Act is not retrospective in operation and does not apply to transactions prior to it. (*Stone, C. J. and BHAGWANTRAO v. DANODAR.*)

I.L.R. (1938) Nag. 91=20 N.L.J. 285=

A.I.R. 1938 Nag. 112.

—S. 5—Total interest paid, if relevant.

According to S. 9 of the Central Provinces Money-Lenders Act, no Court shall decree on account of interest a sum greater than the principal of the loan. It is not enough that the total interest paid up to date is more than the principal, is quite sufficient. (*Gruer, J.*) **RAMCHANDRA v.**

1938 N.L.J. 361.

—S. 11—Applicability—Conditions—Relationship

that the decree holder is a money lender and that the transaction giving rise to the decree was a loan as defined by the Act. It is not enough that the relationship of decree holder and judgment-debtor exists between

from the bazaar, the jungle tank and wells lay outside the boundaries of the market.

—S. 23 (3)—Who can sue under—Notification

If the prejudice is established. (*Bose, J.*) **KRISHNARAO GOPALRAO v. SECRETARY OF STATE.** 176 I.O. 736=11 R.N. 75=

A.I.R. 1938 Nag. 188.

C. P. MONEY-LENDERS ACT (1934), S. 11.

the parties. A debt in respect of cotton is not a loan under 1 *Purani, J.*) GULABCHAND & CO.

—S. 11—Construction—*ation for instalments after tion sale—Competency—S. 11, of controls* [21, R. 92, C. P. Code.

S. 11 of the Money-Lenders' Act has to be construed strictly, as it restricts existing rights under the law, and should not be allowed to override the provisions of the existing law, i.e., the provisions of O. 21, R. 92, C. P. Code. S. 11 cannot be interpreted so as to permit of an application for instalments being entertained after the bid at an auction sale in execution of a decree has been accepted and when the confirmation of the sale has become inevitable. Once the bid has been accepted, the Court has to confirm the sale under O. 21 R. 92 C. P. Code, unless good cause is shown or O. 21, (Roughton, F. BHANU.

CENTRAL PROVINCES ACT (II OF 1922), S. 25 (1), of Secretary to Civil Station
ected post

palities Act. (*D. P. Mishra*) CIVIL STATION SUB-COMMITTEE, NAGPUR v. G. T. MESHRAH.
 1938 N.L.J. 34

against their dismissal by Municipal Committees under R. 2 (1) (a) of the rules framed under S. 25 (7) of the Act. (*D. P. Mishra*) CIVIL STATION SUB-COMMITTEE, NAGPUR v. G. T. MESHRAH.
 1938 N.L.J. 34

—S. 48—Applicability—Enhancement: not powers but procedure irregular—Suit to recover collected

It is true that if a Municipal Committee exercises powers which it did not possess, it should not be regarded as acting in pursuance of the statute governing its powers, and its acts should not be regarded as being those done under the statute. But there is a difference between a case when a corporate body exercises powers which it is wholly absent and a case where it exercises its powers illegally or with material irregularity. In the former case the Municipal Committee's act from beginning to end is illegal, whereas in the latter case the act is quite legal in the beginning but becomes illegal in the end. Where the Municipal Committee has power to enhance the tax on animals brought to slaughter house and follows the procedure laid down in S. 68, C. P. Municipalities Act, but in doing so it lapses into an

C. P. TENANCY ACT (1898), S. 24.

evident that the Act has no provision for review (*Mishra*) MUNICIPAL COMMITTEE, NAGPUR v. WAGALWAR
 1938 N.L.J. 205.

—S. 66, Rules under, R. 11 (a)—Non domestic purpose—Test—Water used by inpatients in doctor's house—Nature of use.

The true test to determine whether water is used for non-domestic purpose is to see whether the water is directly used for any trade or business. If the trade or business requires for its prosecution the direct use of water, that use is clearly non domestic, but when the

himself uses temporarily connexion for patients residing in the building, is not used for any purpose other than domestic purpose. The water does not cease to be domestically used, only because it is used by the

—S. 83—Reference to High Court—When could be availed of.

The advantage of the provisions of S. 83 of C. P. Municipalities Act could be taken only by Government

CENTRAL PROVINCES REDUCTION OF INTEREST ACT (XXXII OF 1938)—Scope—If retrospective

A.I.R. 1938 Nag. 112.

CENTRAL PROVINCES TENANCY ACT (XI OF 1898), Ss 11 and 13—Admission of two to tenancy—Tenancy not divided by metes and bounds—Payment of rent jointly—Death of one of the tenants—Rights of landlord.

Where an owner of property carves a lesser interest, tenancy, out of his rights, the reversion, of course, remains in him, but when the reversion falls in, transfer of title from the tenant to himself, landlord chooses to let in two people on the land each a right to uninterrupted possession of

A.I.R. 1938 Nag. 455.

—S. 58—Scope—If confers a power of review.

—S. 24 (2)—Notice under—Error in description of Khastra numbers—Effect—If vendors notice void.

C. P. TENANCY ACT (1898), S. 30.

A notice under S. 24 (2) of the C. P. Tenancy Act is not void on the ground that there is an error in describing a khasra number and in stating its area. There must be a substantial error such as has in fact misled or was likely to mislead the tenant, otherwise the defect or error is not fatal. (*Greenfield, F.C.*) LACHHMAN v. SETH PARTAPCHAND. 20 N L J. 274.

—S. 30—Scope—Duty of Revenue Officer to ascertain improvements and determine value—Tenant—If bound to put forward claim.

PRASAD

20 N L J. 268.

C. P. TENANCY ACT (1920), S. 6.

—Ss. 11 and 105—Absolute occupancy holding pre-empted by landlord—Mortgagee—Suit by impleading landlord pre-emptor—Pre-emptor discharged—Decree—Mortgagee purchasing holding in execution—Suit by to recover possession against landlord—Competence—Right to pre-emption money.

The substantive right of pre-emption given to the landlord under S. 6 (4) (a) is independent of the right of any mortgagee of the tenant right and is paramount. In addition to this the value of the absolute occupancy

tion to direct how the sum deposited by the landlord. An absolute occupancy tenant's execution of money-decree passed under S. 6 the property was pre-empted by the landlord at price fixed under S. 6 (5) free of all

of Court

The policy of the C. P. Tenancy Act is to secure and preserve to a proprietor whose proprietary rights are transferred a right of occupancy in his *ur* land. This policy cannot be defeated by the proprietor's gift of his *ur* land and then as part of the same transaction surrendering his occupancy right to the tenant. Whenever it appears that a transaction is void as contrary to the policy of a statute, the Court should give notice of the nullity and proceed accordingly. (*Stone, C.J.*) SIDNATH v. JASODA BAI.

IN B.N. 287=173 I C 145 (2)=
A I R. 1938 Nag. 185

—S. 2 (6) (d)—Improvement—House built in *abad*—If amounts to—House built in holding when amounts to.

Where an occupancy tenant builds a house in his *abad* though with a view to live he is not entitled to a right of pre-emption.

N L J. 138

—S. 5—Decree in contravention of—Decree taking possession—Dispute between co-tenants—Validity of will, if can be raised.

A will violating the provisions of S. 5 of the C. P. Tenancy Act though is void in its entirety, he cannot in a suit by a co-tenant plead the invalidity of the will. NAKOTAMDAS v. GURUPRASAD.

But the mortgagee could recover the money deposited in Court which was only a security substituted for land. And the fact that he had failed to ask for a decree against the pre-emption price

—S. 8—Mortgage—Purchase of mortgaged holding—Rights and liabilities of—Failure to redeem mortgage—Pre-emption by landlord—Effect on rights of mortgagee.

The purchaser of the mortgaged property is not personally liable to pay anything in excess of the value of the mortgaged property. If the purchaser of the

10 N 413=A I R. 1938 Nag. 80.

—S. 6—Scope—Notice to incumbrancer—If necessary.

§ 6 does not provide for notice to any incumbrancer

C. P. TENANCY ACT (1920), S. 6.

BONDURU v. SURAJMAL KANHAIYA* *

I L R (1938) Nag. ■

10 B N. 413-A

—S 6—Transfer of absolute

No notice to landlord—Landlord

avoid it—Sale in execution of rent decree—Transferee

of affected.

A transfer of an absolute occupancy holding is valid unless and until it is avoided by the landlord in the manner and to the extent provided by S. 6 of the C. P. Tenancy Act. The sale of such a holding in execution of rent decrees to which the transferee was not a party when he was the tenant of the holding does not bind him. The transferee obtains a good title and becomes a tenant from the date of transfer. (Grille and

C. P. TENANCY ACT (1920), S. 89.

not the sale of the *sir* but the arrangement or device which attempts to evade the provisions of the Act.

Per Digby, J.—Where a surrender and a sale deed of proprietary right are both executed on the same date and it has been arranged to make the surrender before the sale deed is executed, the surrender deed is the execution of "device which is void and illegal" (Stone, C. J., Bose and Digby, J. J.) ASARAM v. LUDESHWAR.

177 I C 6=11 B N. 109=

A I R. 1938 Nag 335 (F B).

—Surrender found illegal—Surrenderer,

to set aside surrender—Powers of

sells his proprietary rights in a

surrenderer his holding of *sir* lands in

acquired occupancy rights, and the

surrender was illegal, the surrenderer holds the surrendered land for the benefit of surrenderor—a *cestui que trust*—because surrenderer is supposed to hold the lands burdened with an obligation in the nature of trust. In a suit to set aside the surrender Court can not only declare the surrenderer as a sort of trustee but can place the

they ought to be. (Stone, C. J.)

ASARAM v. LUDESHWAR,

177 I C 6=11 B N. 109=

A I R. 1938 Nag 335 (F B).

—S. 49—Surrender—Suit to set aside illegal

surrender—Surrenderer holding as quasi-trustee—

Limitation—Law applicable.

Per Stone, C. J. and Viswan Bose, J.—In a suit to

set aside surrender which was found to be illegal on

the pre-emption price, though it is charged with the rental arrears the landlord could not proceed against the money simply by obtaining an order from the Revenue Court to hand it over to him. He must first execute the decree for arrears already obtained and should obtain a decree for arrears for which no decree had been obtained. He must proceed to enforce his rights against the money in the same manner as he enforces them against the land.

TODAR v. RAMBHADRA

—Ss. 12 and 89—Transfer in S. 12 if includes

surrender.

'Transfer' in S. 12 does not include the 'surrender' referred to in S. 89 of the C. P. Tenancy Act (Per Stone, C. J.) (Stone, C. J., Bose and Digby, J. J.)

ASARAM v. LUDESHWAR

11 B N. 109=

—S. 12 (4)—Scope

one tenant in favour of

If prohibited,

S. 12 prohibits certain

body of the section A

decree-tenant for value

of another claiming a

right of settlement

of *sir* land, that is

transfer and therefore

th S. 12 Hence such

documents to

registration (Bose and

BAI v. SHRI DEO RADHA

176 I C 57=11 B N. 24=

A I R. 1938 Nag 30.

—S. 49—Scope and

object of—Device to

evade law

—Duty of Court.

Per Stone, C. J.—It is

the policy of the law

to prevent the land-

working classes being

driven into the state

of landless proletariats

so far as may be, and

accordingly it is

provided by S. 49, C. P.

Tenancy Act, that

alienation of *sir* land,

that is homefarm

land in cultivation,

shall be ineffective

unless the sanction

of the appropriate official has first been obtained. It is of the utmost importance that this safeguard should be maintained in full force and effect. It is likewise desirable that collusion

—S. 63 A (3)—Right in the diverted holding—

Extent—Building of a house—Mortgagee of house

placed in possession in execution of his decree—Rights

of the occupancy tenant.

Although S. 63-A of the C. P. Tenancy Act retains the rights of the tenant in the diverted holding it does not follow that the tenant's rights as such continue to subsist in the object which has been the mode of diversion of the holding. Where an occupancy tenant builds a house and a mortgagee of it is placed in possession of it in execution of his mortgage decree, the occupancy tenant retains only the right to the mere site of the

it will not become available until the house is

(G P Burton, R. M.) MT BODHANBAI

J. 1938 N L J 136

89—Compliance—Deed of relinquishment by

tenant in favour of landlord temple—Ten-

ant's right of temple and holding deed on behalf of

of temple—If sufficient delivery

An occupancy tenant executed a deed of relinquish-

ment in favour of the landlord temple. The tenant wa

notice of the parties exactly what their bargain amounts

to under the law and if they have understood the position

C. P. TENANCY ACT (1920), S. 89.

one of the panchas of the temple and therefore *prima facie* had authority to hold the deed on behalf of the trustees of the temple till they were in a position to consider the matter.

Held, that this amounted to a sufficient delivery of the deed and hence the provisions of S. 89 were satisfied. (*Bost and Purank, J.J.*) SAHAUDRA BAI v. SHRI DEO RADHA BALLABHJI. 176 I.C. 57 = 11 II N. 24 = A.I.R. 1938 Nag. 30.

—■ 89—Surrender by tenant in favour of land lord—Effect of

When there is a determination of the tenancy by a

ACT, SS 1

—Sch

exclusive

Art 1 of Sch II has no application to a co-tenant claiming to be in exclusive possession of a holding. The ordinary law of limitation applies to such a case. (*Niyogi, J.*) RAMJI v. MADRI. 173 I.C. 103 = 10 R.N. 278 = A.I.R. 1938 Nag. 89.

—Sch. II, Art 1—Intention—Attaining quick finality in revenue record.

Per *Digby, J.*—The intention Act is evidently to secure free regarding tenancy land, and to claims stirred up in village finality in the revenue records. (*Wong, L.J., Bose and Digby, J.J.*) ASARAM v. LUDHESHWAR. 177 I.C. 6 = 11 R.N. 109 = A.I.R. 1938 Nag. 100 = 10 R.N. 109.

CERTIORARI—Writ of—Pro-
issue—Regular exercise of quasi
forcement—Issue of writs of cert
for the purpose of

The power of the H
rari and prohibition
quasi-judicial powers
unquestioned. (*Pane*
BENGAL COURT OF
I.L.R. (19

—Writ of—Pri
Failure of Election
that the election has be

CHARITABLE AND RELIGIOUS TRUSTS ACT (1920), S. 3.

—Writ of—Revenue Court—Suit by holder of office of village blacksmith for possession of inam land attached to office alienated by previous holder—Decree by Revenue Court—If without jurisdiction—Application for writ of *certiorari* to High Court—Competency. See MADRAS HEREDITARY VILLAGE OFFICES ACT, SS. 13 AND 21. (1938) 1 M.L.J. 406.

where the purpose of the trust is partly public and partly private. In every case, the real substance of the trust and the primary intention of the creator of the trust have to be looked at. If the intention of the creator was the creation of a trust for a public purpose, the dedication in favour of the poor relations of creator who are class-

in the neighbourhood will be of the trust. (*Guka and LI CHAUDHURI v. TABU* 10 R.C. 522 = 173 I.C. 453 = A.I.R. 1937 Cal. 313.

—§ 3—Construction—"Trust... for a public purpose of a charitable or religious nature"—Meaning of—Deed or will creating trust—Part of pro-
r private purposes—Specified
r public purposes—If falls

applicable to a trust merely because a small sum is reserved for purposes which may

3 of the
muta-
not be
in such
A.R.M.
1051 =
800 =
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that the rejection of certain votes by the election officer

A.I.R. 1938 Oudh 262.

CHARITABLE AND RELIGIOUS TRUSTS ACT (1920), S. 3.

the trust, the trust property, and the beneficiaries must

direct.

Under Cl 2 to § 3, the Court is enabled to direct the examination and audit of the accounts in hands the funds or the properties of the quite apart from whether he is a tru (*Agarwala and Varma, JJ*) RAMSAROOP ESHWAR DAS. 175 IC 636-4

11 B P. 5-19 Pat LT 639-AIR 1938 Pat 280

—§ 5 (3) and (4)—Jurisdiction of District Judge under—Limits—Decision as to nature of trust—When justified.

S. 5 (4) of the Charitable and Religious Trusts Act in terms gives the Court of the District Judge jurisdiction to decide, under certain circumstances, the question whether a trust is one to which the Act applies. When either its existence or its being a trust to which the Act applies, is denied, and no undertaking as contemplated by sub-r. (3) is given, the District Judge is exercising a jurisdiction vested in him, if he decides as to the nature of the trust. (*Zia-ul-Hasan and Yarker, JJ*) GANGA RAM JAITLEY v. J N JAITLEY 178 IC 167-1938 M W N 1054-

1938 O A 890-1938 A.W.R. (CC) 85-

1938 O L R 467-A I R 1938 Oudh 282

CHILD

1929)—

case for

inquiry—Legality.

S 10 of the Child Marriage Restraint Act requires a Court taking cognizance of an offence under the Act either itself to make an inquiry under S. 202, Cr P. Code, or to direct a Magistrate of the 1st class subordinate to it to make such an inquiry. A transfer of such a case by a District Magistrate to a Sub-Divisional Magistrate for disposal without any such inquiry is therefore illegal. (*Lakshmana Rao, J.*) SIYAGAMI ANMAL v MUTHU IYER. 48 L.W. 774

—S. 5—Preliminary acts—If punishable.

S. 5 of the Child Marriage Restraint Act takes

HAIDER : SYED ISSA

39 Cr I

—S. 6—Scope of—Promoted, outside British India—If punishable

S. 6 of the Child Marriage Rest only to a marriage that is

CHOTA NAGPUR TENANCY ACT (1908), S. 14.

—S. 9—Complaint—Case under S. 5 sent by Magistrate to Police Officer for investigation—Letter by

Hence, when, such case is forwarded to an Assistant Superintendent of Police for investigation a letter written

CHIT FUND—Stakeholder taking mortgage security bond from successful bidders—Effect of—Trust—Insolvency of stakeholder and sale of his properties by Receiver—Said by purchaser on security bonds—Maintainability. See TRUSTS ACT S. 59.

1938 M W N 523.

CHOTA NAGPUR ENCUMBERED ESTATES ACT (VI OF 1878), S 12 A—Applicability—Execution sale—Sanction of Commissioner—Necessity.

A sale in execution of a decree is an alienation within the meaning of S 12 A of the Chota Nagpur Encumbered Estates Act and an execution sale held without the sanction of the Commissioner is void. (*Wort and Agarwala, JJ*) MAHADEO PRASAD v BHAGWAT NARAIN 177 IC 810-5 B R 18-11 B P 187-

1938 P W N 400-A I R 1938 Pat 427.

Under the Chota Nagpur Tenancy Act non occupancy rights can arise only in the case of a holding which means "parcel or parcels of land" which is the subject matter of a separate tenancy and not an undivided share. Hence a person who has been inducted on the land by one of the co-sharer thicadars without the consent of others is not a non occupancy raiyat. (*Wort and Manohar Lal, JJ*) NARAYAN RAM SAHU v. KARTIC SINGH 174 IC 207-4 B R 411-

10 R P 487-A I R 1938 Pat 113.

—S 14—Scope—Tenure-holder creating xarpeshgi—Death of tenure holder without heirs—Resumption by

a person
On the
landlord

BHAIRODAYAL SAHU v. JAGESHWAR SAHU
174 IC. 627-4 B R. 464-
10 R P 540-A I R 1938 Pat.

CHOTA NAGPUR TENANCY ACT (1908), S. 64.

—S 64—Applicability—Land held by occupancy raiyat for purpose of cultivation—Bulk of land brought under cultivation—Trespasser reclaiming part of area

U. P. CODE (1908), S. 2

a mere formality; nor can it be implied from the mere fact that the Court allows execution to proceed. The section expressly requires the permission to be granted not given as
URAON v.

Pat 464.

—Applica-
on ground

Chota Nagpur Tenancy Act applies to
ed in conducting the sale, but has no

on the part of the Deputy Commissioner. It would appear, therefore, more natural to say that as there is not in the strict sense a cause of action under S 74 (a) but merely a right to invoke an administrative operation which may by either the landlord or the tenant be incapable of application. Even assuming that does apply, the right of application

the application should be made and accordingly from which the period of limitation would run. On the contrary the section makes the right of applying conditional on a state of facts, namely where a tenancy has been vacated. While that condition exists there is no ground for fixing on any specific moment of time. (*Lord Wright*) JAGADISH CHANDRA DEO DHABAL DEB v. SANTAL.

17 Pat 110=172 I C 649=
=1938 P W N 107=1938 A L R 71=4 B R 231=
(1938) O W N

—S. 138

meaning of.

What the Legislature intended to provide for in S.139

omission to issue the notice required
(*Courtney-Terrill, C. J. and Ma-*
dan, J.) BARAIK RAM GOVIND SINGH v. CHOWRA
URAON.

10 Pat. 632=1938 P.W.N 78=

173 I.C. 644=4 B.R. 315=19 Pat L.T. 259=

10 B.P. 430=A.I.R. 1938 Pat 97.

CODE (V OF 1908), S. 2

gra Tenancy Act. See AGRA

AND S. CL. (14)

1938 A L J

—Order that cross objection

ates is appealable as a decree
em that an order that an
appeal abates is also appealable as a decree and if so
there is no reason why an order that the cross-
objection abates should not be held to be a decree for
the same reasons. (*Stone, C.J. and Clarke, J.*) PURU-
SHOTTAMDAS v. DEOKA RAN. 1938 N L J, 399.

—S. 2 (2)—Decree—Appeal memo. stamped after
limitation, under an extension of time—Dismissal as
time barred.

Where an appeal presented with insufficient stamp
was after the period of limitation stamped with the full
one by the Court, a dismissal of
d is a decree within the mean-

Code. (*Pollock, J.*) SONBA

RIGUES. 177 I O 508=

11 B.N. 142=1938 N L J, 155=

A.I.R. 1938 Nag. 322.

g—S. 2 (2)—Decree—Dismissal of suit
in default of
fixed time—

—S. 100 (1)—Applicability and scope—Omission

payment of
deficient court-fee is a decree as defined by S. 2 (2) C.
of Code and an appeal lies from that order. Where

C. P. CODE (1908), S. 2.

ferred upon it by O. 41, Rr. 32 and 33, C. P. Code. If the court fee is paid within the extended time given by the trial Court, there is sufficient compliance with the order for payment of court-fee and the plaint cannot be regarded as having been rejected under the order of the trial Court. (*Ganga Nath, J.*) *KASHI KURMI v. BANSRAJ KURMI*. 174 I. 298=10 B.A. 564=

1938 A.L.R. 262=1937 A.L.J. 1346=1938 A.W.R. 13 (H.C.)=A.I.R. 1938 All. 150.

—S. 2(2) and 47—Decree—*Final decree—Judgment-debtor and decree holder*—Order—Appeal.

The case of a judgment debtor with the decree holder auction-
S. 47 and an order passed against
is a decree under S. 2(2) and a
(*Stone, C. J. and Puranik, J.*)
GANPATRAO YADORAO. 177 I.C. 612=11 B.N. 155=

A.I.R. 1938 Nag. 212.
—S. 2(2)—“Decree”—Memorandum of appeal—
Rejection for non-compliance with O. 41, R. 1—Appeal—

accordance with O. 41, R. 1 is appealable. Only in
the case of a judgment-debtor and decree holder

—S. 2(2)—“Decree”—Order by appellate Court
under O. 41, R. 5 refusing to stay execution—Appeal
ability—Ss. 47 and 96

—S. 2(2)—“Decree”—Order refusing to stay execution—Appeal
ability—Ss. 47 and 96

—S. 2(2)—“Decree”—Order refusing to stay execution—Appeal
ability—Ss. 47 and 96

—S. 2(2)—“Decree”—Order refusing to stay execution—Appeal
ability—Ss. 47 and 96

No appeal lies against an order of appeal for
fee demanded. Such
ed by S. 2(2), C. P.
under O. 43, R. 1,
party is by way of re-

C. P. CODE (1908), S. 3.

Gruer, J.J.) *BALAJI DHUMNAJI v. MST. MUKTARAI*.
I.L.R. 1938 Nag. 106=173 I.C. 329=
10 B.N. 298=1938 N.L.J. 1=
A.I.R. 1938 Nag. 122 (F.B.).

—S. 3(2)—Preliminary decree—What amounts to
—Partition decree

Where a compromise provided for a division of the
property according to the respective share of the parties
as per their degree of relationship and in effect not only

—S. 3(11)—Executor—When becomes legal repre-
sentative.

Ordinarily a grant of probate refers back to the date
of the death of the deceased and the executors become
legal representatives from the time of the death.

KANHAIA LAL
1938 A.M.L.J. 91.
representatives”—Meaning
of—Joint Hindu family—Death of manager—Surviving
legal representatives. See *NEGOTIA-
TION*.
40 Bom.L.R. 884.
—S. 3(11)—Executor—When becomes legal repre-
sentative—Here inter-

estate of a deceased
addler the status of a
) *BALKISAN v. MST.*
531=11 B.N. 146=

1938 N.L.J. 168=A.I.R. 1938 Nag. 298.

—S. 2(11)—Legal representative—Scope of the
definition—If restricted to legal heirs—Co-partner
if covered by defini-

ve under S. 2(11),
a person should be
The last portion
er the case of a co-
survivorship on the
r is said in a repre-
J.) *GVAN DATT*
107=10 B.A. 560=
=1938 A.L.J. 56=

1938 A.W.R. (H.C.) 58=A.I.R. 1938 All. 163.

—S. 2(11)—Scope—If controls O. 22, R. 5—In-
termediary—Right to be impleaded in preference to true

person claim to be the
deceased, the Court under
is required to decide which of
the legal representative. An
e, though a legal representa-
) C. P. Code, is not entitled
who is found to be the true
representative. (*J.*) *SURAJ PRASAD*
1938 P.W.N. 803.

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representative. (*J.*) *SURAJ PRASAD*
1938 P.W.N. 803.

C. P. CODE (1908), § 9.

—S. 9—*Bar of suit—Suit of civil nature—Service in temple and prayer—Right to stand in particular position—Suit to declare—Maintainability.*

It is unquestionable that the Civil Courts in have no ecclesiastical jurisdiction and that they cannot decide questions of ritual except in so far as the decision of such questions is a nec to the decision of civil rights. It is that a right to worship in a particular right and that a right to perform which obligations and emoluments a civil right. It has been recognised

adjudicating on a right of worship or a right to a religious office not infrequently is obliged to decide incidentally questions of ritual; but it follows that the Court will not, on a mere pretence that a right to worship has been infringed, arrogate to itself a jurisdiction which it does not possess to prescribe forms of prayer, rights to religious precedence and questions of that nature. The Civil Courts have neither the prayer nor the duty to attempt to draft a prayer book for a temple. A Civil Court cannot also be required to declare the rights of persons to stand in any particular show of the congregation. (*W'asworth, J.*) APPADORAI AYYANGAR v. ANNANGARACHARIAR, 1938 M.W.N. 1206=48 L.W. 722.

—S. 9—*Jurisdiction of Civil Court—Suit to declare right to first honours at a festival in a temple—Maintainability*

A claim to first honours at a festival in a temple is only a right to a dignity or precedence and cannot be regarded as a right of civil nature, whether it is in a temple or elsewhere so long as it was not attached to an office. A suit in respect of such a right is not maintainable. (*Pandurang Row and Abdul Rahman, JJ.*) THATHACHARIAR v. SRINIVASARAOHAYA IVENGAR, 173 I.C. 988=10 R.M. 654=47 L.W. 459=1938 M.W.N. 18 (2)=A.I.R. 1938 Mad. 334=(1938) 1 M.L.J. 174.

—S. 9—*Special tribunal appointed by statute—Civil Court's jurisdiction.*

Where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily

—S. 10—*Applicability—Court in which instituted suit pending—If should be cc grant relief claimed in later suit—Relief If refer to earlier suit or later suit—*

For the application of S. 10, C. P. Code, it is necessary that the Court in which previously instituted suit is pending must be a Court of jurisdiction competent to grant the relief claimed in the subsequent suit. The wo. sui (P. VE.

Code has reference to the entire subject-matter in controversy between the parties, and is not equivalent to 'any of the questions in issue'. The section does not bar the trial of a suit for rent for a period subsequent to that included in the previously instituted suit which is

C. P. CODE (1908), S. 11.

—S. 10 (as amended by Government of Burma Adaptation of Temp. Order, 1937)—*Retrospective British Burma to stay suits pendency of suits founded on*

the Adaptation of ish Burma have no by reason of the pendency of suits founded on the same cause of action in British India. The amendment to S. 10 being an alteration in the form of procedure has a retrospective effect. (*Roberts, C.J., Mya Bu and Dunkley, JJ.*) ARUNACHALAM CHETTYAR v. VALLIAPPA CHETTYAR, 1938 Rang.L.R. 176=175 I.C. 275=10 R.E. 474=A.I.R. 1938 Rang. 180 (F.B.).

—S. 11.

Adverse finding.
Applicability.
Cause of action Different.
Co defendants.
Competent Court.
Conflicting decrees
Connected cases
Consent decrees
Constructive res judicata.
Co-plaintiffs.
Decision on question of law
Directly and substantially in issue
Execution proceedings.
Findings incidental (but not necessary).
Finding on title
Heard and decided.
Insolvency proceedings.
Landlord and tenant
Litigating under the same title
Miscellaneous proceedings.
Parties and representatives
Prior decision.
Scope
Explanation IV—MIGHT AND OUGHT.
Explanation V.
Explanation VI—REPRESENTATIVE SUIT.
Rent suit.

—S. 11—*Adverse finding on one issue against successful party—If res judicata.*

Singh, J.
SAHI.

provision of the Income-tax Act. (*Leach, C.J., Varadachariar and King, JJ.*) TRICHY TENNORE H. P. FUND, LTD. v. COMMISSIONER OF INCOME-TAX, MADRAS, I L R 1938 Mad. 183=1938 M.W.N. 171=173 I.C. 998=10 R.M. 648=

C. P. CODE (1908), S. 11.

47 L W. 21 = A.I.R. 1938 Mad. 148 =
(1938) 1 M.L.J. 130 (F.B.).

—S. 11—Applicability—Foreign judgment—*Res judicata*—Conditions of. See C. P. CODE, S. 13.

40 Bom L.R. 77.

—S. 11—Applicability—Issues.

Per *Bhida, J.*—S. 11, C. P. Code, applies not only to

fact that the procedure then in force was of summary character = immaterial for the purposes of S. 11, C. P. Code (*Young, C.J. Bhida and Din Mohammad, J.J.*)
MASJID SHAHID GANJ v. SHIROMANI GURDWARA
PARBANDHAK COMMITTEE, AMRITSAR

175 I.C. 945 = 11 B.L. 91 =
40 P.L.R. 319 = A.I.R. 1938 Lah. 369 (F.B.).

—S. 11—Arbitration proceedings—Award filed under Arbitration Act—*Res judicata*.

42 C.W.N. 367

—S. 11—Causes of action different—Decision when may become *res judicata*.

Section 11 does not require that the causes of action in both the suits should be the same for the application of the rule of *res judicata*. The causes of action may be different or the subject matter may be different, but if the issue involved in the same and if it was directly and so issue in the former case between the parties under whom they or any of them claim, litigating under the same title, the decision of such an issue in the former case will operate as *res judicata* provided the other conditions laid down in S. 11 are satisfied (*Stone, C.J. and Purandhar, J.*)
SITABAI v. HARI

I.L.R. 1938 Nag. 496 =
A.I.R. 1938 Nag. 401.

—S. 11—Cause of action, different—Prior suit on the footing that a release was of no legal effect—Subsequent suit for damages for breach of covenant of title contained in the same release.

The plaintiff obtained a release from the Official Assignee in respect of an insolvent's property. But a mortgagee of the property brought it to sale and it was sold to a stranger. Thereupon the plaintiff Assignee for a refund of sum paid to him as consideration for the release on the ground that the release was of no legal effect. But it was dismissed. The present suit was brought by the plaintiff against the Official Assignee, for damages for breach of covenant of title contained in the deed of release. On a plea that the later suit is barred by *res judicata*,

Held, that the causes of action in the two suits were entirely different and that the second suit was not barred by the rule of *res judicata* (*Leach, C.J. and*

C. P. CODE (1908), S. 11.

—S. 11, O. 2, R. 2—Cause of action distinct—Gift of certain property to wife in lieu of dower—Widow remarrying after husband's death—Suit for pre-emption by husband's brother dismissed—Subsequent suit for declaration of title to property on ground of remarriage of widow and for avoidance of gift—If barred.

A Mahomedan gifted certain property to his wife

previous suit what the husband had done in relation to the property and as in the subsequent suit he was basing his right of ownership on what had been done by the widow herself, the reliefs in the two suits were based on two separate causes of action and the subsequent suit was not barred either under S. 11 or under O. 2, R. 2.

Held, further, that the plaintiff was debarred from challenging the gift in the subsequent suit as by bringing the suit for pre-emption he should be taken to have transacted in the eye of the law.

(*Din Mohammad, J.*)
HATUN v. HAYAT KHAN.

40 P.L.R. 791 = A.I.R. 1938 Lah. 492.

—S. 11—Co-defendants—Applicability of *res judicata*—Conditions necessary.

The plea of *res judicata* can prevail, even if the contesting parties in the subsequent suit or those through whom they claim were ranged as co-defendants in the previous suit. But before this plea can prevail, three conditions are necessary to be fulfilled—(1) there must

be a conflict between the defendants concerning this conflict in the claims, and (3) the conflict must have been

finally decided. Where in a suit by the plaintiff claiming tenancy rights against defendants 1 and 2, who asserted priority over both the plaintiff and the defendants was impleaded as defendant No. 3, and the Court dismissed the suit on account of the finding that X was entitled to succeed to the tenancy rights in suit in preference to both the plaintiff and the defendants, all the above three conditions are fulfilled and the question of X's title to succeed to the tenancy rights is, therefore, *res judicata* and cannot be re-opened in a subsequent suit by X against defendants 1 and 2. The fact that former suit was dismissed as against defendants 1 and

40 P.L.R. 1030

—S. 11—Co-defendants—Decision, when *res judicata*

To establish *res judicata* between co-defendants it should be established that there was conflict of interests between co-defendants, that it was necessary to decide that conflict in order to give plaintiff the relief which he claimed, that the question between the co-defendants was finally decided. A.I.R. 1931 P.C. 114, Rel. on In a suit by A for partition against J and X, J was the entire property did not put in and it was decided that A was entitled to have in accordance with a partition. Thereafter X put in applica

C. P. CODE (1908), S. 11.

their shares under a different pedigree table, whereupon *f* brought a suit for a declaration that *X* would be entitled to those shares only which were in accordance with the pedigree table relied on in *K*'s suit, which fact being disputed by *X*, *f* claimed that that point was *res judicata* as between *f* and *X* both being co-defendants in *K*'s suit.

Per *Bhide and Dalip Singh J.J.* *Skemp, J.*, Contra. - *Held*, that the question of preference between the two

not *res judicata* in favour of *f* in his suit against *A*. (*Bhide, J.*, on difference between *Dalip Singh and Skemp, J.J.*) RURA = BANTA.

40 P.L.E. 600 = A.I.R. 1938 Lah 227.

—S. 11—Co-defendants—Res judicata—Absence of conflict of interest between defendants inter se.

If there is no conflict of interests between the defendants inter se, and therefore no question to be decided between them in order to give the plaintiff relief in the suit, there can be no *res judicata* between co-defendants (*Leach, C. J.* and *Varadachariar, J.*) DHANA PALA CHETTI v GOWD CHAND SOWCAR.

1938 M.W.N. 938 = A.I.R. 1938 Mad 959 = (1938) 2 M.L.J. 775

—S. 11—Co-defendants—Res judicata—Conflict of

the plaintiff the relief which he claims, and (2) the question between the co-defendants was finally decided

—S. 11—Competent Court—Prior suit for *a*. of rent in Court of Assistant Collector, II under Agra Tenancy Act of 1901—Decision on proprietary rights—Subsequent suit for ejectment under Tenancy Act (III of 1926) in Court of Assistant Collector, I class—If *res judicata*.

For the application of the rule of *res judicata*, the Court which decided the former suit should have been competent to decide not only the issue which arises in the subsequent suit but the subsequent suit itself. The decision of an Assistant Collector of II class, in a suit for arrears of rent inter partes under the Agra Tenancy Act of 1901, holding that the defendant was a proprietor and not a tenant, does not operate as *res judicata* in a subsequent suit for ejectment under S. 82 of the Tenancy Act of 1926 before the Assistant Collector of I class, and does not preclude the latter from referring an issue to the Civil Court and deciding it on the merits. In any case, the Civil Court, to whom the issue of proprietary right is to be referred, is not bound by the decision of the Assistant Collector, II class, in the prior suit for arrears of rent. (*Them, Ag. C.J.* and *Niamatullah, J.*)

C. P. CODE (1908), S. 11.

SHEODARSHAN LAL v. BALMAKUND.

I.L.R. 1938 All 184 = 1938 E.D. 43 = 174 I.G. 62 = 10 E.A. 637 = 1938 A.L.J. 229 = 1937 A.W.R. 1215 = 1937 A.L.J. 1339 = A.I.R. 1938 All 62.

—S. 11—Competent Court—Rent suit—Variation in the rent—Compromise decree by Tahsildar—If *res judicata* in subsequent suit—Agra Tenancy Act, S. 47.

A decree or order which sanctions a variation from the

1. A Tahsildar is not a

to give any decision as
ard to the provisions of
S. 47 of the Agra Tenancy Act where in a suit for arrears of rent, a compromise is filed providing inter alia that the rent payable would be *batai* and not cash rent, an order of the Tahsildar recording the compromise and passing a decree in terms of the compromise is without jurisdiction, especially when the compromise never states the rate at which *batai* should be taken, confers no benefit at all on the tenant, contains no specific admission as to the cash rent recorded being wrong, contains no bargain and make, no change in the papers. Such a decree cannot operate as *res judicata* between the parties in a subsequent suit, and the fact that the tenant has in a subsequent suit remained *ex parte* and allowed a decree to be passed against him on the basis of the compromise decree cannot estop him

of exclusive jurisdiction, its decision on any matter on

on is binding on the
his is a decision by
which it has exclusive
If Cause Court decides
ive jurisdiction, then
sequent Courts. In a
ort has no exclusive
of title. Hence the
a title in suit for rent
cannot be *res judicata* in the subsequent suit for rent
and for ejectment, because the prayer for ejectment

Court—Subsequent suit by same plaintiff against same defendant for same relief in Subordinate Judge's Court

—Plea of *res judicata*—Contention by plaintiff that former suit not really triable by Munsif's Court—If open—S. 21—Suits Valuation Act, S. 11—Principle of constructive *res judicata*—Extent and scope of.

A judgment of a Court without jurisdiction is a nullity and want of jurisdiction cannot be waived. To this fundamental rule there are two exceptions recognized by law: (1) S. 11, Suits Valuation Act, which deals with defects of jurisdiction due to wrong pecuniary valuation, and (2) S. 21, C. P. Code, which deals with a wrong place of suing. These two sections recognise that there may be a waiver on the part of the defendant in regard to the pecuniary or territorial jurisdiction of a Court, as the case may be, and the absence of jurisdiction in such cases would not render the decree a nullity. In other words, there is a distinction between inherent incompetency in a Court and irregular exercise of jurisdiction,

C. P. CODE (1908), S. 11.

—S. 11—*Co-plaintiffs—res judicata between them—If necessary.*

An issue may be *Res judicata* between co-plaintiffs as well as co-defendants, and for an issue to be *res judicata* between co-plaintiffs it is not necessary that there must be a real contest between them. When the interests of various plaintiffs are common, and no question of adopting two conflicting positions as between themselves arises, the decision arrived at by the united efforts of all will bind them for ever, especially when the only person concerned in holding the full right. (*Addison, A. C.*)

RAM BHAJ v. AHMAD SAID

178 I.

—S. 11—*Decision on question of law—Correctness of decision—If material.*

The correctness or otherwise of a judicial decision has no bearing upon the question whether it does or does not operate as *res judicata*. A party taking the plea of *res judicata* has to show that the matter directly and substantially in issue has also been directly and substantially in issue in a previous suit and has been heard and decided. The principle of *res judicata* is not to be ignored merely on the ground that the reasoning whether in law or otherwise of the previous decision can be attacked on a particular point. It is not correct to say that a previous decision on a question of law is not *res judicata* in a subsequent suit. (*Puranik, J.*) SHEORAM z. MULCHAND.

175 I.C. 693—11 R.N. 7

A.I.R. 1938 Nag. 195.

—S. 11—*Decree for possession in favour of Mel-*

—S. 11—*"Directly and substantially in issue"*

should form the subject-matter of a decree. The Court can gather from the materials before it namely, the pleadings, the judgment and the decree, that that matter was directly and substantially in issue and formed the basis of the judgment arrived at in the

to show for want of proper materials as to whether an issue was raised and heard and finally disposed of, or whether it formed the basis of the decree in the suit or that it was necessary for the Court to decide it, the plea of *res judicata* must fail. (*Ranganekar, J.*) JANBU TAVAN.

—E

Point n

—Decis.

C. P. CODE (1908), S. 11.

Where though a point is not properly raised by the plaintiff but both parties have without protest chosen to join issue upon that point, the decision on that point would operate as *res judicata* between the parties. (*Stone, C. J. and Puranik, J.*) SITABAI v. HARI.

I.L.R. 1938 Nag. 496—A.I.R. 1938 Nag. 401.

—S. 11—*Directly and substantially in issue—Previous suit under S. 127 of Oudh Rent Act dismissed on ground that plaintiff cannot sue alone—Subsequent suit for arrears of rent treating defendant as statutory*

same defendant treating him as a statutory tenant is not barred by *res judicata*. The question which is directly and substantially in issue in the subsequent suit is whether or not the defendant is a statutory tenant of the plaintiff. This question was never directly and substantially in issue in the previous suit, much less was

—S. 11—*Directly and substantially in issue—Rent suit—Plea that holding comprised further area at fixed rent—Fending upholding defendant's plea—Subsequent suit by landlord for same area as before—Res judicata.*

Directly and substantially in the former suit and decision in the former suit would operate as *res judicata* in the subsequent suit. In a suit for pro-

dants again resisted the suit on the ground that their holding included a further area of $1\frac{1}{2}$ acres, and that the same had been settled with them at a total rent of Rs. 42 II 0.

Held that the decision in the former suit as to the *res judicata* in the *J. Fast Ali, Khaja Manohar Lall, Jf.*

NGH.
I.O. 678—5 B.R. 8—
1938 P.W.N. 379—
938 Pat 306 (S.B.).

bitantially in issue—
Rent suit—Question of title—Decision—If *res judicata* in subsequent rent suit.

If, in a suit for rent, a question of title is raised, not directly, but incidentally, then any decision on the question of title cannot operate as *res judicata* in a subse-

C. P. CODE (1908), S. 11.

ADAKE v. GOPALAKRISHNAMACHARYA.

175 I.C. 868 = 11 E.B. 10 = 40 Bom L.R. 359 =
A.I.R. 1938 Bom. 291.

—S. 11—Directly and substantially in issue—Suit for rent of land in estate—Plea of rent-free tenure—Finding of rent free holding—Subsequent suit by purchaser of estate more than 12 years later for rent—Res Judicata—Adverse possession—Acquisition of rent-free title.

In 1903, when the Court of Wards was in charge of an estate, a suit was filed to recover rent from the occupant of the land who pleaded that the land had been granted rent-free. The plea was upheld and there was a specific finding that the land was rent-free for the person who purchased the estate in 1912 and the then occupant, a descendant of the tenant, for rent.

Held, (1) that the decision in the prior case was *res judicata* on the question of liability; (2) that apart from *res judicata*, the judgment starting point for adverse possession in favour of the occupant of the land, and he must therefore be deemed to have held the land to establish his *res* (*Wadsworth, J.*)
APPA RAO GARU

C. P. CODE (1908), S. 11.

—S. 11—Execution proceedings—Limitation—Notice issued to judgment debtor under O. 21, R. 22—Judgment-debtor failing to appear—Objection by him on ground of limitation at next date of hearing—Maintainability.

On an execution petition filed by the decree-holder, the Court issued a notice to the judgment-debtor under O. 21, R. 22, C. P. Code. The judgment-debtor not appearing on the date fixed for his appearance, a further rule was issued for attaching the property fixing another date. On that date the judgment debtor appeared and made an objection that the execution was barred by limitation. He was then within time to appeal against the order made on the date fixed for his appearance.

—S. 11—Execution proceedings—Mortgage suit—

—S. 11—Execution proceedings—Omission to raise

application is dismissed as having been being under O. 21, R. 58, C. P. Code, by the rule of constructive *res judicata* filing proper applications under S. 47, C suits are filed instead of applications, t.

1938 P.W.N. 239 = A.I.R. 1938 Pat 216.

—S. 11—Execution proceedings—Co-judgment-debtors—Execution against properties of one—Objection by latter—Order overruling—If *res judicata* against others in subsequent execution

An order overruling the objections raised by one judgment-debtor whose property is sought to be sold in execution does not operate as *res judicata* so as to preclude the other judgment-debtors from raising a similar objection in a subsequent execution application as against their property. (*Fort, C.J. and Manohar Lal, J.*)
BANARSI PRASAD v. MAHABIR PRASAD SAHU

177 I.D. 689 = 11 R.P. 170 =
5 B.R. 11 = 1938 P.W.N. 710

—S. 11—Execution proceedings—Decision that house of judgment-debtor is exempt from attachment—Subsequent application to attach that house in hands of legal representative of judgment-debtor—If barred

A decision by the Executing Court that a certain

—S. 11—Execution proceedings—Order in execution—*Res judicata*

Where a wrong order in execution has become final because an appeal therefrom has been dismissed as time-barred, principles of *res judicata* come into play and that order cannot be set aside in subsequent execution (*Middleton, J.C. and Shri Ahmad, J.*)
AMIR KHAN v. KHAIR MOHAMMAD

178 I.C. 275 = A.I.R. 1938 Pesh 77.

—S. 11—Execution proceedings—*Res judicata*—Applicability—Conditions—Order against decree holder subsequent to sale—If *res judicata* against purchaser in later proceeding

S. 11, C. P. Code, no doubt applies to orders passed in execution proceedings, but such orders would affect only the parties or their privies and not strangers not deriving title from such parties. An order passed against the decree-holder after an auction-sale, to which the auction-purchaser is not a party cannot operate as *res judicata* as against the auction purchaser in a subsequent proceeding (*Niyogi, J.*)
MADHAO v.

suit alleging that defendant inherited property from father who obtained it by deed of gift from grandfather.

It is well settled that S. 11, C. P. Code, means whether the party litigating person. Where in the purchase of property from the defendant had inherited grandfather, and in the second suit the plaintiff alleged that the defendant had inherited the property from grandfather.

Held, that in both suits the plaintiff occupied the same capacity that of a purchaser from the defendant, and that, therefore, the plaintiff was litigating under the same title in the second suit as that which was set up in the first suit.

Held, further, that the question raised in the second suit was not directly and substantially in issue in the first suit, as in the second suit the matter upon which the plaintiff's claim was founded was the deed of gift.

42 O.W.N. 560.

S. 11—Litigating under same title—Former suit by A against trustees of temple that certain property attached to temple belonged to him—Suit decreed in favour of A—Subsequent suit by worshippers of temple against A's heirs—If barred—Plea of collusion in former suit—Onus.

A suit was brought by A against the trustees of a certain temple that certain property attached to the temple belonged to him. The trustees defended that it was on the ground that it was in the temple.

A Later on, the worshippers of the temple brought a suit against A's heirs for a declaration that certain property attached to the temple belonged to them. The plaintiffs alleged that the property was attached to the temple by A's heirs. The plaintiffs also alleged that the property was attached to the temple by A's heirs. The plaintiffs also alleged that the property was attached to the temple by A's heirs.

Held, that the plaintiffs being the worshippers of the temple were persons interested in it and had therefore the locus standi to sue to protect the property of the temple from being wrongfully claimed by third persons.

Held also, that though the plaintiffs were not the successors of the defendants in the former suit, the title litigated under in both suits was the same, as they both claimed the title to the property in the temple. The plaintiffs were therefore litigating under the same title as the defendants in the former suit.

It was held that the decision in the former suit was not res judicata. (Tilak Chand, J.) **PIARE LAL v. SHER GIL**, 40 P.L.E. 867—A.I.R. 1938 Lah. 492

A decision in a prior suit against a party in his personal capacity cannot operate as res judicata against him in a later suit by him as Mutawalli of a certain endowment. (Sudhakar, J.)

8 C.L.J. 293.

Res judicata—Title—Suit—Decree—Report—Fresh suit for limitation Act. 19 Pat L.T. 250.

S. 11—Miscellaneous proceedings—Rerai Patil and Patwaris Law—Proceedings in respect of appointment of patil—Finding not based on full and fair enquiry—Subsequent vacancy—Prior finding, if res judicata.

Where in respect of the appointment of a Patil, in a previous proceeding, a finding against a system of rotation of the office is given without a full and proper enquiry, and the amended law on the subject of rotation is once again enacted, when on a subsequent application for re-issue of writ—

C.) **SAKHARAM DATTAL**, 1938 N.L.J. 171.

S. 11—Miscellaneous proceedings—Correction case under U.P. Land Revenue Act—Res judicata. A correction case under S. 39 of the U.P. Land Revenue Act cannot operate as res judicata. (Darling S.M. and Bompford, J.M.) **RAM DAVAI v. BINDESH-WARI PRASAD**, 1938 B.D. 121=

1938 A.W.R. 72 (B.E.).

S. 11—Miscellaneous proceedings—Correction case under S. 42 U.P. Land Revenue Act—Res judicata—Subsequent suit for declaration under S. 121 of

SASTI HAJJAM v. GAURI HAJJAM, 1938 E.D. 132—1938 A.W.R. 77 (B.E.).

S. 11—Miscellaneous proceedings—Decision under S. 148, B.T. Act—If res judicata in subsequent regular suit.

A decision under S. 158 of the Bengal Tenancy Act cannot be said to be a decree so as to operate as res judicata in a subsequent regular suit between the parties. (Dhaupe, J.) **HIRA LAL SINGH v. MATIK-DHARI SINGH**, 178 I.C. 570—11 R.P. 88=

A zamindar having issued a notice of ejectment on his tenant as a non occupancy tenant under S. 67 (1) (b) of the Oudh Rent Act the latter instituted a suit to

C. P. CODE (1908), § 11.

contest the notice. The suit was decreed and the notice of ejectment cancelled. Some years later the representative in interest of the zamindar sought to eject the successor in interest of the prior tenant.

Held, that the cancellation of the notice of ejectment as a result of the previous suit was binding on the present zamindar who was consequently estopped from seeking to eject his tenant on the same ground (*Darling, S.M.*) **PARMAL BISWAS v. RATI PAL SINGH.** 1938 E.D. 162 = 1938 A.W.R. (B.R.) 90

—S. 11—Miscellaneous proceedings—Order in correction of record case—If operates as *res judicata*.

A brief and a casual order passed in a correction of records case, without taking any evidence and without considering the nature of the plots, cannot operate as *res judicata* in subsequent proceedings (*Darling, S.M. and Mehta, J.M.*) **BINDHACHAL RAI v. MOTI RANI.** 1938 E.D. 627 and 675 = 1938 A.W.R. (B.R.) 282 (2) = 1938 A.L.J. (Supp.) 91

—S. 11—Miscellaneous proceedings—Prior suit under *Agra Tenancy Act* of 1901—Later suit under *Tenancy of 1926—Change in Law—Bar of res judicata*

Where the previous suit brought to eject a su was under the old Act of 1901 a second suit under the new Act, 1926 in which the law has changed, is not barred by the decision in the prior suit (*Darling, MAHESH SINGH v. MT.*)

of *res judicata* can have no application as a consequence of a decision in proceedings which are in themselves final in the sense that they are conclusive between the parties, because they are not permanent in effect (*Castello and Panckridge, v. MANIKLAL.* 67 C.

—S. 11—Miscellaneous proceedings—*Mahant in Revenue Court. Prior decision in Civil Court, permanent and unregistered and hence invalid—How far binding on Revenue Courts.*

Where in a civil suit certain leases executed by a Mahant were declared to be not binding on the successor as they were permanent alienations, and also that as

1938 A.W.R. (B.R.) 316
—S. 11—Miscellaneous proceedings—Suit for profits under S. 108 (15) of *Oudh Rent Act—Finding that landholder was guilty of negligence in not getting*

C. P. CODE (1908), § 11.

—S. 11—Miscellaneous proceedings—Suit under S. 99 of *Agra Tenancy Act*—Finding as to status of plaintiff—If *res judicata* See *AGRA TENANCY ACT, S. 99* 1937 R.D. 373 (2).

—Ss 11 and 47—Order of stay under S. 21 of the *Debt Conciliation Act*—Appeal held incompetent—Fresh application for execution if barred.

Where an executing Court stayed proceedings under S. 21 of the Debt Conciliation Act and an appeal therefrom was held incompetent, it is open to the decreeholder to apply afresh for execution. The prior order is not one under S. 47, C. P. Code, and it did not in the least affect the rights of parties and such an order cannot possibly be regarded as having the effect of *res judicata*. (*Nyogi, J.*) **HARI SADASHO v. WAMAN VITHAL.** 1938 N.L.J. 229.

—S. 11—Parties and representatives—Hindu father or manager—Adverse decision against—If *res judicata* against sons or other coparceners.

A Hindu father or manager sufficiently represents his sons or the other members of the joint family in a suit instituted against the father or manager on a mortgage executed by him. The latter must be considered to be

subsequent suit by the sons or other members to recover possession of the excess property included in the final decree and sold in execution is barred by *res judicata*, because the sons or other members must be deemed to

—S. 11—Parties and representatives—Title suit against vendor and vendee—Decree holding that vendor had no title—Appeal by vendee impleading plaintiff alone—Vendor not party to appeal—Vendor not appealing—Effect—Finding against vendor—If *res judicata*

of the plaintiff. The 1st defendant appealed impleading the plaintiff alone and without making the 2nd defendant a party to the appeal the appellate Court allowed the appeal and reversed the decree and dismissed the appeal.

C. P. CODE (1908), § 11.

Held, in Letters Patent Appeal, that the 1st defendant in assailing the decree of trial Court in appeal must be deemed to do so not only on his own behalf but also on behalf of his vendor, the 2nd defendant, that his success in the appeal would operate not only to his advantage but also to the advantage of the absent party. There was consequently no bar of res judicata against the 1st defendant's appeal. 1936 M.W.N. 789, reversed. (*Venkatasubba Rao and Abdur Rahman, JJ*)
ARULAYI = RAKKA KUDUBAN. 47 L.W. 467 = 1938 M.W.N. 450 = A.I.R. 1938 M. 77.

—S 11—*Plea of res judicata—Availability in judgment in earlier litigation that prevented from raising such plea*

If the circumstances of the earlier observations contained in the judgment, that litigation that the defendant was raising any plea of *res judicata* in any would not preclude another Court from plea and examining the circumstances rests. (*Khundor, f.*) **FAKIR CHANDRA BISWAS v. EKKAI SARKAR** 42 C.W.N. 160.

—S 11—Prior decision—Decree deciding dispute not given effect to by agreement of parties—Effect of—Decision in suit under S. 9, Specific Relief Act—Effect of.

A decree for partition obtained in 1919 by her sister B and brother (the parties being *et ux*) was not executed as the parties had agreed not to take any advantage of the decree and they continued to be in joint possession of the properties as if the decree was not in existence. The parties having fallen out in 1932, A successfully instituted a suit under S. 9, Specific Relief Act, to recover possession of the properties, of which she was dispossessed by B through her husband and her son. B thereafter filed a suit for partition and possession of her share which was contested by A as barred by *res judicata* by reason of the decree of 1919 and the findings in the suit under Specific Relief Act.

Held that the parties not having given effect to the

properties on the day she alleged in that suit that she was dispossessed and nothing more, and did not operate as a bar to the second suit. (*Irach, C. J. and Varadachariar, J.*) **ABHIRAMI AM** - *Current cases*

—S 11—Prior decision—
same time—One of them institut
Res iudicata.

Where two suits are disposed there is no prior decision *w* *judicata*, though one of the other. (*Darling, S.M and Bomford, J M*) RENUKA RAI *v.* SHYAM DUTT RAI 1938 R D 133= 1938 A W R 21 (R)

—S 11—Pro forma defendant—Finding, if res
judicata.

A finding in favour of a part defendant and not a necessary does not operate as *res judicata*.
(Addison, *Ag C. J.* and *Din Mohan v. Mt. Karam Nishan*.)

C. P. CODE (1908), S 11.

—§. 11—Representative suit—Leave to sue on behalf of others not obtained in prior suit—Later representative suit—If barred.

Where certain persons brought a representative suit on behalf of a community for establishing their rights connected with a temple and where it was contended that the suit was barred by reason of the decision in an earlier suit brought by certain persons of the same community with reference to similar rights in the same temple it was held that the mere fact that the persons

res judicata operates as much on general principles as on the wording of the section. The *raison d'être* of the rule is to confer finality on decisions arrived at by competent Courts between interested parties after genuine contest and to allow persons who had deliberately chosen a posi-

AKHTAR KHAN. 178 I.O. 302-40 P L R 591-
AIR 1938 Lab 571.

—S 11, Expl. IV—Applicability—Execution proceedings—Omission to raise point decided in suit—Point raised but not decided—Res judicata.

The doctrine laid down in *Exl. IV* to S 11 of the C. P. C. is applicable to execution proceedings and must

operates as *res judicata*, because it must be assumed

and Aggarwala, JJ) MAHADEO PRASAD v. BHAWAI
NARAIN. 177 I.C. 810-5 B.R. 18-11 R.P. 187-
1938 P.W.N. 400-A I.R. 1938 Pat. 427.

—Subsequent suit at co-sharer for accounts — If barred.

A person filed a suit as exclusive owner against persons in wrongful possession. This suit being dismissed, he instituted another suit for accounts as a co-charge. To whom was the suit barred from?

in different
it in issue in
constructive

C. P. CODE (1908), S. 11.

res judicata embodied in Expt. 4 to S. 11, C.P. Code, was inapplicable to the case. (*Coldstream and Monroe, JJ*) VIDYA WANTI KAUR v SARDAR SHAHDEV SINGH. A I.E. 1938 Lah. 139.

—S 11—*Might and ought*—*Available defence not raised*—*Res judicata*

Where a person fails to plead a matter in defence in a previous suit, he is barred by *res judicata* from raising the same matter as subject matter in a subsequent suit. (*Bennet, Ag. C. J. and Verma, J.*) KANHAIYA LAL v BANKE BEHARI. 178 I.O. 66=

1938 A.W.R. H 596=1938 A.L.J. 940=1938 A.L.R. 808=A.I.R. 1938 All 542

—S 11, Expt. IV—*Might and ought*—*Alternative claim*—*Prior suit on title for possession*—*Defendants pleading possession as heirs*—*Dismissal of suit*—*Later suit for joint possession*—*Bar of res judicata.*

10 B.N. 418

—S 11, Expt. IV—*Might and ought*—*Earlier*

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for ejectment on the ground of an illegal transfer and the later suit was one under S. 86 of the Tenancy Act of

1938 A.W.R. 16 (B.E.)

1938 A.W.R. 16 (B.E.)

—S 11—*Might and ought*—*Hindu joint family*—*Alienee from member of share in one item of family property*—*Suit for partition*—*Coparceners impleaded as defendants*—*Omission to raise pleas usually open in partition suit*—*Constructive res judicata*—*Rule*—*Partial partition.*

There can of course be no compulsory partition under the Hindu, whether at the member of a joint family or at the inst alienee from a coparcener of one item of perty Though the proper course for an alie for partition of all the family properties, the co parcnerns who may be impleaded in his suit are not

a division being effected *inter se* between themselves or to have all questions in dispute between them settled once for all in the alienee's suit itself. Even in a suit instituted by a coparcener the other parcnerns might well be content to continue undivided and leave the only one to separate the plaintiff from them There is no principle of law which prevents the coparceners

C. P. CODE (1908), S. 11.

defendants in an alienee's suit from restricting the scope of the suit to what may be necessary for the grant of the relief claimed by the plaintiff. Where the alienee only claims a division of the particular item in which he has acquired a share, the coparceners who are impleaded are bound to plead only what would be answer to the claim made by the plaintiff. The fact that they do not raise other pleas which are not necessary in that suit cannot therefore operate as *res judicata* in a subsequent suit by a coparcener for partition. It would also follow that what is actually decided by the decree passed in the suit cannot be reopened at the instance of any of the persons who are parties to that suit or their representatives A plea of constructive *res judicata* must be determined only with reference to the suit as framed and not with reference to what under the law the suit must have been (*Varadachariar and Abdur Rahman, JJ.*)

If barred by *res judicata*.

Certain house was sold in execution of a decree against

ought to have been raised in the previous suit. The subsequent claim could not be considered to be so disclaim in the previous

The suit was there-
judicata. (*Bhide, J.*)

40 P.L.R. 556=

A.I.R. 1938 Lah. 443

—S 11, Expt. IV—*Might and ought*—*Party not aware at the time of first suit of the right relied on in second suit*—*Bar of res judicata.*

In all litigation there are innumerable matters that might be made ground of defence or attack but whether they ought to be so made would depend largely upon the circumstances of each case. The question whether a party had at the time of the previous suit

the subsequent suit at the date of the means of knowledge suit, the second suit

constructive *res judicata*
emoucheu in S. 11, Expt. IV, C. P. Code. (*Ahundkar, J.*) FAKIR CHANDRA BISWAS v. EKKARI SARKAR

42 C.W.N. 560

—*Plaintiff undertaking*
Agreement not to
breach of agreement—

Judgment debtor depositing money to prevent execution sale—*Suit to recover money so deposited*—*Maintainability*—*Res judicata*—*C. P. Code, S. 47.*

In a suit brought by the appellant against the respondent, it was agreed between them that although a decree should be passed against the respondent decree should not be executed by the appellant

C. P. CODE (1908), S. 11.

holder. A decree was passed and in breach of the agreement, appellant executed the decree and brought the respondent's property to sale. The respondent deposited money to save his property from sale in execution and then has obtained a decree against the appellant.

decree or judgment could not be recovered back in a

A.I.R. 1938 Pat. 41.

—S. 11, Expl IV—'Right and ought'—Suit for possession based on title—Claim for compensation for improvements not set up in defence—Subsequent suit for such compensation—If barred.

In a suit for possession of land based on title, a claim for compensation for the improvements made by the defendant ought to be set up by him in defence. If it is not so set up, a decree for possession passed in the suit would operate as a bar to the further agitation of the question of compensation in a subsequent suit.

40 L. W. 100.

—S. 11, Expl. IV—Previous suit by plaintiff's predecessors claiming partition of whole shamlat—Subsequent suit by plaintiff claiming that certain well and land in shamlat was not liable to be partitioned—If barred by res judicata.

A suit was instituted by the plaintiff's predecessors in which they claimed that entire shamlat was liable to be partitioned. A subsequent suit was brought by the plaintiff to the effect that certain well and land in the shamlat should be excluded from partition.

Held, that this plea ought to have been raised and

made a ground of defence in the first suit.
plaintiff's
subsequent
(Addition)
v. MEH.

C. P. CODE (1908), S. 13.

—S. 11, Expl. V—Maintenance suit—Prayer that it should be charged on property not granted—Subsequent suit for such charge—Subsequent suit—If res judicata.

A suit for maintenance asks that it should be charged on the property and the Judge assesses the value of the property. If the Court does not charge it on any property, the Court is tantamount to a request to charge the property with her maintenance (Almond, J. C. and Mr Ahmad, J) MT, HOWANI BAL v. DEVI DIAL. 177 I.O. 1005=

A.I.R. 1938 Pesh. 68.

—S. 11, Expl. V—'Relief'—Prior suit for partition and possession and mesne profits, past and present—Claim to future mesne profits not awarded—Second suit for mesne profits from date of suit or decree in prior suit—Res judicata.

The "relief" referred to in Expl. V to S. 11, C. P. Code, means relief arising out of a cause of action accrued at the date of the institution of the suit, and such relief does not cover future mesne profits in respect of which the cause of action accrued subsequently to the suit. Where a suit for partition and possession of lands and mesne profits, past and future, has been brought and decided, and the decree fails to award the claim to future mesne profits, a second suit to recover mesne

profits from date of the first suit is not barred by res judicata.
71.)

73=

124=

A.I.R. 1938 Bom 231 (F.B.).
—S. 11, Expl. VI—Representative suit—Suit by Hindu father for benefit of himself and sons—Dismissal on oath taken by defendant—Effect on sons—Fresh suit by latter on same cause of action—Res judicata. See OATHS ACT, SS 8 AND 11. 40 Bom L.R. 1005.

—S. 11, Expl (vi)—Representative suit—Suit by reversioner—Finding in—Res judicata.

A suit brought by a reversioner is for the benefit of all the reversioners entitled to sue and just as any finding given in favour of a reversioner benefits all

C. P. CODE (1908), S. 13.

Code. Where the defendant voluntarily submits to the jurisdiction of the foreign Court even if that Court has no jurisdiction over him on the ground of his being a resident of British India, and consents to have a decree

foreign Court, and as such is binding on the defendant unless it is subject to the provisions of the C. P. Code. (*Ra v. RAGHAVEND*)

—S. 13—S
to validity of wil
conclusive in Br
—If bound. *Se*

—S. 13 (a)—*Court of Competent Jurisdiction*
Test of—Power of British Indian Court in foreign judgment

Whether a foreign Court has competent jurisdiction is to be determined by international law. Ordinary Courts in British India to give judgment, and to refuse to do so because it proceeds on grounds which would not be adequate in British India unless it offends against the rules of S. 13, C. P. Code. (*Rangnekar and Macklin J.J.*) MALLAPPA v. RAGHAVENDRA

I.L.R. (1938) Bom 15-174 I.C. 615-
10 R.B. 470-40 Bom L.R. 77-
A.I.R. 1938 Bom. 173.

—S. 13 (b)—*Merits of the case*—*Power of*

C. P. CODE (1908), S. 20.

S. 17 of the C. P. Code does not confer jurisdiction on a Court unless the defendants are in possession of some property within the jurisdiction of that Court. Further, it is necessary for the section to apply, that the defendant should be Courts in British India. possession of two items of property within the jurisdiction of a British Court, one of which was within the jurisdiction

Indian Court would have no jurisdiction to entertain the suit as regards the item of

—S. 17—*Suit in respect of house and land in Court within whose jurisdiction house alone is situated—Appeal from decree filed in proper Court—Claim in respect of house abandoned in appeal—Appeal relating only to land which does not lie within jurisdiction of appellate Court—Appeal, if can be heard.*

Where a suit in respect of a house and certain land was filed in a Court within whose jurisdiction the house

—S. 13 (c) and (d)—*Foreign judgment—Validity*
—Refusal to give effect to valid plea of res judicata—Disregard of international law—Effect of.

A foreign judgment is impeachable of the conditions specified in S. 13

—S. 20—*Place of suing—Commission agent directed to sell goods—Agent intimating terms of business and asking for custom*

in Bombay what his charges he commission agent wrote a letter in detail and saying "let us Then you shall have reli-

en by the commission agent business was not an

The fact that the commission agent have your transaction offer to be bound by indication up till then in Ho-changabad faction therefore did not but in Bombay. RAMDAS v. ABDUL-

C. P. CODE (1908), S. 20.

SATTAR.

173 I.C. 943—10 B.N. 331—

A.I.R. 1938 Nag. 188

—Ss. 20, 23 and 151—Leave granted under S. 20

(b) without notice to opposite party—Objections
such leave—If can be heard.Where leave under S. 20 (b) is granted
issuing notice to the opposite party is not

10 H Pesh 74—A.I.R. 1938 Pesh. 15

—S. 20 (b)—Leave under—Grant of—Effect—
Suit on same cause of action against many defendants—
Some resident beyond Court's jurisdiction and one outside
British India—Suit instituted after obtained leave
of Court—Decree—Validity—Suit by non resident
foreigner to declare decree void—Competency—Propriety
of grant of leave—If can be challenged.There is no reason to read Cl (b) of S. 20, C. P.
Code as intended

ing the same as against all of them, where leave has
been obtained under S. 20 (b) of the C. P. Code to im-
plead them in the suit, the suit is properly instituted
against all the defendants including those resident be-
yond the Court's jurisdiction, and it makes no difference
for that purpose whether these latter are re-idents of
British India though outside the local limits of the
Court's jurisdiction or are persons residing outside
British India. The decrees passed in the suit cannot be
attacked in a subsequent suit as being void for want of
jurisdiction as against the non-resident foreigner. Any
argument as to whether the leave was or was not pro-
perly granted under S. 20 (b), C. P. Code, in the parti-
cular circumstances is not one which can be advanced in
a separate suit attacking the validity of the decree pass-
ed in that suit. (*Varadachariar and Horwill, JJs.*)
SWAMINATHAN CHETTIAR v. SONASUNDARAM
CHETTIAR. 47 L.W. 552—1938 M.W.N. 558—
A.I.R. 1938 Mad 731.

—S. 20 (b)—Leave to sue—Granting of—Consi-
derations

The leave under S. 20 (b) cannot be given arbitrarily
and when the defendants who reside outside jurisdiction
do not appear the Court is bound to consider their
position before granting leave. This obligation is in no
way lessened when they do appear and object and

C. P. CODE (1908), S. 24.

the creditor applies or not to India. Under S. 49 of the
Contract Act, it is the duty of the promisor when no place
is fixed in the contract for the performance of it to apply
to the place of performance.
The

local office in the City of
Shiyali taluk in Tanjore
is leasing the lands to the
in Madras. The defendant
in favour of the Super-
resided in Madras and who
was described as such in the lease. But the lease deed
itself was executed and registered in Shiyali taluk. The
rent was fixed in cash. The lease, however, did not fix
any specific place where payment was to be made. A
suit for rent was instituted in the City Civil Court,
Madras, but that Court returned the plaint holding that
it had no jurisdiction as the cause of action did not arise
in Madras.

Held, that the intention of the parties must have been
that the rent was to be paid in Madras.

A.I.R. 1938 Mad 971.

—S. 21—Applicability—Suit to set aside decree on
ground that Court had no territorial jurisdiction—If
succeeds.

A separate suit would always lie to have a decree set
aside or to get it declared a nullity on the ground that
the Court passing the decree had no territorial jurisdic-
tion as regards the subject-matter of the suit. The
provisions of S. 21, C. P. Code, are inapplicable, as the
question does not arise before the Appellate or Revisional
Court. (*Muthurjee, J.*) KUMAR SARAT KUMAR
ROY v. DHARMADAS BHATTACHARJEE.

174 I.C. 522—10 M.C. 685—42 C.W.N. 375.
—S. 21—Objection to place of suing—If can be
allowed in revision.

An objection as to the place of suing cannot be allow-
ed in a revisional Court where there has not been a con-
sequential failure of justice. (*Abdul Rashid, J.*) G. P.
CHATTERJEE v. DHANPAT MAL DIWAN CHAND.

40 P.L.R. 234.

—S. 21—Principle of—Applicability and scope—
Constructive res judicata as to jurisdiction of Court—
Right of party to challenge jurisdiction of Court
chosen by himself. See C. P. CODE, S. 11.

1937 M.W.N. 1292.

—S. 21—Applicability—'Other proceeding' if
sued in the same Court as the first

If from the circumstances a contract is entered into, it
is reasonable to infer that the intention of the
parties was that performance was to be in a certain place
inference should be drawn whether the rule
English Common Law which requires the debtor

isent to cover the retransfer of the decided case, back
to the Court of origin.

C. P. CODE (1908), S 24.

1938 O A 621=1938 O W N 775=
A.I.R. 1938 Oudh 217.

—Ss. 24 and 115—Case transferred under—*Res ipsa, if lit.*

Where a case is transferred under S 24, no revision lies from the order of transfer; but if it is found that the application for transfer is not *bona fide* one, the case can be retransferred. (*Bhida, J.*) KESHO DAS v. N. C. GOYAL & Co. 175 I C 525=10 R L 735=

A.I.R. 1938 Lah 95

—S. 24—Execution proceeding—Transfer of objection proceedings to another Court without transferring execution proceedings—*Legality*

Obiter: Where in execution of a decree certain property of the judgment-debtor is attached and a third person files an objection to the attachment on the ground that the property belongs to him, the objection can be decided only by the executing Court and therefore the transfer of the objection proceedings alone to another Court without transferring the execution proceedings to that Court is not in accordance with law (*Bhida, J.*) KESHO DAS v. N C GOYAL & CO

175 I C 525=10 R L 735=
A I R. 1938 Lah. 95.

—S 24—Ground for transfer—Judge deciding particular question of fact or law in previous case.

The mere fact that the Judge had decided a particular point of law in a previous case is no reason for a transfer in a subsequent case, otherwise a Judge would eventually become unfit to decide most cases. If the question is one partly or wholly of fact, still less does there seem to be any reason for a transfer.

—S 24—Interest pendente lite—*Duty of Court.*

Where a claim is held to be proved, there is no reason for refusing to the plaintiff, interest for the period during which recovery was delayed by defendant contesting the suit. (*Weston*) RAJ MAL v CHHAGAN MAL

1938 A M L J. 39

—S 34 (2)—Applicability—Maintenance decree creating charge and directing payments in future also—Omission to award interest—Effect—Suit for interest in respect of maintenance accruing due in future—*Maintainability*

A decree granting maintenance at a certain rate per month from the date of plaint and also future maintenance and which gives the plaintiff a charge in respect of maintenance on immovable property is none the less a decree for money within the meaning of S 34, C P Code, the fact that it directs the payment of money in the future as well as money immediately rendered due by the decree and that it creates a charge does not render S 34 (2) inapplicable to it Where such a decree does not award interest in respect of future maintenance a suit claiming in barred by S 34 DURG A MADH GARU.

—S 35—Award of costs—Discretion of Plaintiff not accepting tender of part payment

P. CODE (1908), S 38.

The question of costs is not affected by the fact that the plaintiff had refused to accept a tender of part payment. A creditor is under no obligation to reduce the costs of proceedings for the benefit of the debtor by accepting a tender of part payment and, thus bringing the amount for which proceedings have to be taken, within the jurisdiction of a less costly tribunal. The fact that the tender was subject to no conditions and it was accompanied by a statement that, if accepted, it would be without prejudice to the creditor's claim to sue for the balance, is immaterial (*Panckridge, J.*) ISMAIL BHAI RAHIM v. ADAM OSMAN

I L.R. (1938) 2 Cal 337=42 C.W.N. 1023.

—S 35—Award of costs—If includes pleader's fees.

Pleader's fees are costs of the suit and unless pleader's fees are specifically excluded an award of costs of the suit must be taken to include pleader's fees. There is no distinction between awarding costs of the suit and decreeing a suit with costs. (*Heston*) BHAG CHAND v. BENI PARSHAD.

1938 A. M L J. 47.

—S. 35—Several plaintiffs—Separate costs—If can be awarded.

It is not in any circumstances possible, in a case where there is more than one plaintiff, for such plaintiffs to appear and act separately. If any of them is not disposed to act with, and to appear by the same advocate as, the others then the only proper course open is to apply to strike him out as a plaintiff and to add him as a defendant. The plaintiffs are entitled to one set of costs.

One have had same solicitor (*Brand, J.*) SEFDAT 1938 Rang L R 252.

—S 35—Award of costs—*Reasons*

—S 35—Interest pendente lite—*Duty of Court.*

Where a claim is held to be proved, there is no reason for refusing to the plaintiff, interest for the period during which recovery was delayed by defendant contesting the suit. (*Weston*) RAJ MAL v CHHAGAN MAL

1938 A M L J. 39

—S 34 (2)—Applicability—Maintenance decree creating charge and directing payments in future also—Omission to award interest—Effect—Suit for interest in respect of maintenance accruing due in future—*Maintainability*

A decree granting maintenance at a certain rate per month from the date of plaint and also future maintenance and which gives the plaintiff a charge in respect of maintenance on immovable property is none the less a decree for money within the meaning of S 34, C P Code, the fact that it directs the payment of money in the future as well as money immediately rendered due by the decree and that it creates a charge does not render S 34 (2) inapplicable to it Where such a decree does not award interest in respect of future maintenance a suit claiming in barred by S 34 DURG A MADH GARU.

—S 35—Award of costs—Discretion of Plaintiff not accepting tender of part payment

—S 35—Interest pendente lite—*Duty of Court.*

Where a claim is held to be proved, there is no reason for refusing to the plaintiff, interest for the period during which recovery was delayed by defendant contesting the suit. (*Weston*) RAJ MAL v CHHAGAN MAL

1938 A M L J. 39

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—S 35—Interest pendente lite—*Duty of Court.*

Where a claim is held to be proved, there is no reason for refusing to the plaintiff, interest for the period during which recovery was delayed by defendant contesting the suit. (*Weston*) RAJ MAL v CHHAGAN MAL

1938 A M L J. 39

C. P. CODE (1908), S. 39.

how and in what manner and in what petition the Court of highest grade should realize the property, in this respect as in respect of claim petitions S. 68 must be held to override S. 38, S. 39 dealing with execution. holder and one decree, holders than one and the by more Courts than one the definition of the situation as given by S. 63, it is obviously S. 63 which must be applied, and S. 63, cannot be controlled or governed by S. 38. (*King and Krishnaswami Ayyangar, JJ*) VENKATA REDDI v. VENKATARAMNAM. 1938 M W N. 1098—48 L W 664.

—S. 39—Application under—Form—Notice to judgment-debtor—Necessity—Requirements of O. 21, R. 11—Compliance with—Necessity.

S. 39 of the C. P. Code does neither provide that notice to judgment debtor is necessary, nor prescribe a particular form.

Though it is an s
is not an appli
formalities laid d
for such an appli
v. GHISOO LAL

—Ss 39 s
Executing Court
certificate—Competency to give

A Court executing a decree sent to it, has the same powers in executing it, as if it had been passed by itself. It only executes the decree and not the certificate sent by the Court passing the decree. As such it is not bound by any amount mentioned in it. It is the decree itself which is to be the guide in these matters for the executing Court. It is competent to execute it for the amount due though it may be in excess of that mentioned in the certificate. (*Misra, J.*) MANGAL CHAND v. MT. DULARI BIBI. 1938 A W R. (H C.) 667—1938 A L J 880—A.I.R. 1938 All 664.

—S. 39 (2) (d)—Small Cause C
execution application to its regular
to proceed against immovable property

It is a principle of the interpretation
where a list of certain circumstances in which a parti-

C. P. CODE (1908), S. 44.

Where a decree of a Court of one province is transferred to a Court in another province, for purposes of execution, according to S. 40, C. P. Code, the rules

are the rules
ees sent from
on and Din
HESTAR LAL.

11 R.L. 330 (2)—40 P L B. 14—
A.I.R. 1938 Lah. 126.

—S. 41—Jurisdiction of the transferee Court—
When terminates—Striking off of execution application—
Effect.

S. 41 of the C. P. Code states that the Court to which a decree, is sent for execution shall certify to the Court which passed it, not merely that it shall make an order that such a certificate shall be prepared. Where a transferee Court on the application of the decree holder to strike off the execution in part satisfaction, did order it

—S. 41—Scope—Certificate under—What amounts to—Arrangement in transferee Court between decree-holder and judgment debtor—Time given to latter to pay up certain amount in full satisfaction—Attachment kept alive and decree holder having liberty to proceed to execute for whole amount on default—Report sent by Court to transferor Court relating true facts—Jurisdiction of transferee Court to execute—If terminates.

Where the Court to which a decree has been transferred for execution has neither executed the decree nor finally failed to execute the decree, it does not cease to be competent to the decree merely because Court of the true the parties under time to pay up an satisfaction, the

Amad, J J) SITAL RAM v. THEKUR DAS.

178 I.C. 127—A.I.R. 1938 Pesh 70.

—S. 39 (2)—Transferee Court—Competency to execute—Test.

The words 'of competent jurisdiction' that the competence of a Court to exec decree, must be determined by a reference to try a suit of similar valuation decree sought to be transferred was Amad, J J) SITA RAM RAI v. MADHO.

1938 A W R. (H.C.) 763—1938 A L J. 1128.

—S. 40—Decree sent for execution to Court of another province—Law governing such executions.

—Ss. 42 and 145—Execution of decrees against surty—Jurisdiction of Transferee Court.

The transferee Court has jurisdiction to execute the

State—Execution in Burma after separation—Law as to, See GOVERNMENT OF BURMA (ADAPTATION OF LAWS) ORDER PARA. 9 AND GOVERNMENT OF BURMA

C. P. CODE (1908), S. 47.

AC

Act

of the decree and a subsequent propriety of executing Court they were stru

Held, that comprehensive revision is raised decree and

C. P. CODE (1908), S. 47.

mour of Hindu widow declaring her right to maintenance and declaring charge on property—Executability—Separate suit to enforce charge by sale—If necessary

Where a decree has been passed declaring the right of a Hindu widow to maintenance and also declaring that the properties separate

properties. When the decree for maintenance has the effect of a decree for sale, the decree-holder is entitled to proceed to execution without any further action. If the charge is created by the decree in the action then a separate suit would be necessary to enforce the charge by way of sale of the properties charged. But when the charge has been created not by reason of the decree made on action but under the Hindu Law, action for the declaration of the right to

S. 47.

Appeal.

Applicability

Bar of suit

Executing Court

Parties and representatives.

Parties to suit.

Question relating to execution to satisfaction.

Scope

Ss 47 and 115—Appeal—Amendment on application under Sr. 151 and 152—Appeal if lies—Revision, competency.

18 Pat L.T. 831—A.I.E. 1937 Pat 654.

S. 47 and O. 21, R. 58—Applicability—Objection by sub-tenant to attachment of rent payable by him

executability of decree—Decision on—Appeal

S. 145, C. P. Code, puts the surety on footing as an original party to the suit, and S. 47, C. P. Code, be read together, the question was the Court into a question raised by the surety as to the executability falls under S. 47, C. P. Code, and the decision thereon is appealable. Even if S. 145 does not in terms apply, as for instance where the surety is not personally liable but the money which he has deposited as security is sought to be made liable, the surety has an equal right of appeal (*Horwill, J.*) *RANGASWAMI CHETTI v. NARAYANA IYENGAR*

176 I.C. 904—11 M.M. 207—1937 M.W.N. 1259—

A.I.R. 1938 Mad 215

S. 47 and O. 21, R. 58 (3)—Applicability—In default decree with default cause—Application for execution—Plea of payment—Burden of proof—Payments alleged beyond 90 days—If can be recognised—Decree-holder—If bound to prove default.

When no payment or adjustment of a decree has been certified under O. 21, R. 2, C. P. Code, and the decree holder applies for execution of his decree for the entire amount due under the decree, the executing Court has to assume that there has been no payment or adjustment and cannot after the lapse of the period of 90 days

not appealable but only revisable under S. 252 of the Tenancy Act (*Darling, S.M. and Bomford, J.M.*) *RAMCHANDRA v. RAGHUNATH SINGH*

1938 R.D. 175—1938 A.W.R. 42 (B.E.).

S. 47—Applicability—Order refusing to stay execution—Appeal, if lies

When an Amending Act changes the phraseology of

staying or refusing to stay execution of a decree. (*Baguley and Mosely, J.J.*) *CHIDAMBARAM CHETTIAR v. SIVASUNDARAM CHETTIAR*

1938 Rang L.R. 580—177 I.C. 942—

A.I.R. 1938 Rang 317.

S. 47—Applicability—Question relating to delivery of possession to auction-purchaser

The question relating to the delivery of possession of the property purchased by an auction-purchaser is not a question relating to the execution, discharge or satisfac-

C. P. CODE (1908), S. 47.

C. P. CODE (1908), S. 47.

O.W.N. 87=
38 Cal. 113.
non—Decree

—S 47—Parties and representatives—Widow added as legal representative of judgment-debtor—Widow objecting to sale on the ground that it was given to her in dower—If entitled.

Where a widow was added along with the

decree some property in excess of what has been granted to him by the decree, it will be a matter relating to execution. Where, therefore, by the decree cultivating rights in *sir* lands were expressly excluded and yet in

BIBI ROSHAN JAN v. KAHAN CHAND

10 B Pesh 53=

A I R. 1938 Pesh. 53.

—S 47—"Representative"—Final decree in partition suit—Purchaser of share of defendant subsequent to final decree—If representative of judgment-debtor—Application for delivery in execution against purchaser—Competency.

A final decree for partition was passed in a suit for partition and subsequently the defendants executed a sale deed in favour of the respondent by which they trans-

such a claim the judgment-debtor is asking the Court to embark on an enquiry whether the decree to be executed is the decree as passed by the Court or as modified by parties. (Pollock, J.) BHASKAR DATTATRAYA v. NILKANTH DATTATRAYA.

11 B N. 169=1938 N.L.J. 148=

A I R. 1938 Nag. 285.

—S. 47—Question relating to satisfaction of decrees—Separate suit—Necessity

A I R. 1938 Nag. 49.

—S. 47—Restitution—Decree passed by Court A

Decree trans-
setting aside
Court at B
stitution in
14, 47 AND
38 Cal. 554.

er is a party and delivery of possession—Resistance by judgment-debtor—Question, if falls under S. 47 or O. 21, R. 103.

S 47 should be construed liberally. A decree-holder purchasing the property sold in execution of his decree with the permission of the Court retains his character

—S 47—Question relating to execution—Attainability of the property.

The question as to whether a particular property is liable to be attached and sold for satisfaction of the decree, is a question relating to the satisfaction of the decree. It cannot be said that the section contemplates that the question must relate to the decree as between the attaching de-
one hand and the objecting de-
(Nasim Ali and Mukherjee, J.J.)

C. P. CODE (1908), S. 47.

C. P. CODE (1908), S. 50.

48—Objection under—When to be taken—
of
on
P.

1937 A.W.R. 1222.

48—Scope—Period of 12 years—If affected or
by S. 78 (2), Provincial Insolvency Act. *See*
INSOLVENCY ACT, S. 78 (2).

48 L.W. 881.

—S. 47—Scope—Order by
ing to stay execution proceeding
falls under—"Decree"—Appeal.

—S. 47—Scope—Party to
O 21, R. 58—Dismissal as barre-
able—Subsequent suit—Bar—If
cation under S. 47 and entertain
C. P. CODE, S. 11

—S. 47—Scope—Question whether
contravention of Santhal Parganas Settlement Regula-
tion and as such invalid—It can be raised in execution
See SATHAL PARGANAS SETTLEMENT REGULA-
TION, S. 6 (b) 1938 P.W.N. 617.

—S. 47 (2)—Application of—Partition proceedings
—Award declaring rights of parties without giving

equitable right to have execution stayed until his suit
shall have been decided and therefore to set-off his
decree which may be passed in his suit. (*Barlee and*
Blackin, JJ) GURUSHANTAPPA v. NAGAPPA.

I L.R. (1938) Bom. 263 = 175 I.O. 427 =
10 R.B. 560 = 40 Bom. L.R. 188 =

A.L.E. 1938 Bom. 253.

from legal
against in

ive is not a
ion, though
be properly
ferred to a

fee.

Held, that the question of payment of additional
court-fee could arise only when the Court had decided

—S. 50 and O. 22, Rr. 11 and 12—Relative
scope of—S. 50, if applies to appeals from execution
proceedings—O 22, R. 11, if applies—And if controlled

decree *See* C. P. CODE, O 34, R 6

1937 A.M.L.J. 99

—S. 48—Construction and scope—"Decree"—If

does not apply to appeals arising from execution proceed-
ings but only to those in the original Court. It is not
correct to say that R. 11 of O 22 is controlled by

against wrong legal representative
nature of—Duty of plaintiff in

only provides the maximum period during which an
presented by his legal representative, the plaintiff must
ful to implead all the ordinary legal
r the law applicable, if he wishes to
decree that might be passed. Never-
has impleaded the ordinary legal
owing to ignorance of facts or
tion of which it turns out that the
representatives were in fact others

C. P. CODE (1908), S. 60.

but failed to produce him on that date. They them-

in Court on the date fixed. It was however not established that he was so ill that it was physically impossible for him to appear or to be produced.

Held, that the surety bond not having provided for such a contingency or for absolving the sureties from liability in such a contingency, they were not absolved from liability and hence were against under the bond in €
(Pandurang Row; J.) KUMARA
re. 47 L.W. 40E

—S. 60—Amendment to S. 3 of Act IX of 1937—Retrospective effect—Suit in S. 3 of Act IX of 1937—Meaning of—Proceedings resulting on award in arbitration.

A.I.R. 1938 Sind 176.

—S. 60—Applicability—Crown grant of village—

awarded under Land Acquisition Act—Liability to attachment.

Compensation money awarded

apply to such a case and the amount in the hands of the Collector cannot be attached by creditors holding money decrees against the persons to whom the compensation has been awarded (Addison and Abdul Rashid, JJ)

actually existing debt, the debt. A sum of money become due, or the payor contingencies which may debt. (Tek Chand, J.)

LAL.

40 F.L.R. 303

—S. 60—Implements of husbandry—Motor tractor.

C. P. CODE (1908), S. 60.

—S. 60—Partial redemption—Property owned

A Malabar tarwad became divided into two tarwads. Each of them possessed an undivided moiety in certain properties and each of them separately mortgaged its undivided half to the same person. One of the tarwads sought to redeem its half-share without suing for partition

—S. 60—Pay of soldier in regular forces governed by Army Act—Attachability.

The pay of a soldier of His Majesty's regular forces is liable to the Army Act of 1922's grant. It is not attachable.

In so far as the substantive law is concerned, that dealing with the actual rights and liabilities of the mortgagee is governed by the law of procedure. Where these matters by the Code of Civil Procedure. Where in a mortgage suit against the father and sons, the law of procedure have been governed in these matters by the Code of Civil Procedure. Where in a mortgage suit against the father and sons, the law of procedure have been governed in these matters by the Code of Civil Procedure.

of property that can be attached and sold under S. 60, C. P. Code. After partition, the share that goes to the son does not belong to the father and the father has no disposing power over it. Therefore such property does not fall within S. 60. Thus it cannot be attached. But for his father's debts if he can be made liable under the In the number of the cases how.

—S. 60—Property—Thiccadar—Decree against for

C. P. CODE (1908), S. 60.

—S. 60 (1) (c)—*Protection under—If can be waived—Mortgage by agriculturist—If amounts to waiver.*

The protection given under S. 60 is for the benefit of the judgment debtor and can be waived by him. Therefore, if he chooses specifically to mortgage his agricultural houses he must be taken to have waived the privilege conferred upon him by this section. (*Rose, J.*) **RAMADHIN v. SHEODUTT.** A I.R. 1938 Nag 514.

—S. 60 (1) proviso, cl. (c)—*Property exempt from attachment in hands of judgment-debtor—If also immune from attachment in hands of his legal representatives.*

Under cl. (c) of the proviso to sub S. (1) of S. 60, C.P. Code, exemption attaches to the property itself and not to the person holding the property for the time being. Consequently if a property is exempt from attachment under the said clause in the hands of the

177 I.O. 835=40 P.L.R. 409=
A I.R. 1938 Lah. 608.

—S. 60 (1) (g) and (n)
*consideration of right as
Sir mukaddam*

The word 'pension' as used in periodical payments of the pensioner; it cannot apply to a limited owner of the property or a grant in consideration. (*Deshmukh, Deshpandya and Sir mukaddam*, is not affected by Cl. (g) of S. 60 (1), C. P. Code. Nor is it affected by Cl. (n) either for the right of the holder is not future or contingent, but present and vested. (*Pollock, J.*) **DEORAO v. RAM** 1938 N.L.J. 112=.

—S. 60 (1) (h) and (i)—

within the meaning of Cls. (h) and (i) of S. 60 (1). (*Mahomed Noor and Chatterji, J.J.*) **BANSI LAL v. MAHOMED HAFIZ.**

C. P. CODE (1908), S. 64.

J.J.) **BANSI LAL v. MAHOMED HAFIZ.**

178 I.O. 141=5 B.R. 61=19 Pat L.T. 768.
—S. 60 (1) (i)—*Public officer—Advocate engaged by Government to conduct Government suit—If public officer.*

Conduct of a suit on behalf of the Government by an advocate for the recovery of public money is performing a public duty which the advocate undertakes. An advocate who is appointed by the Government as a lawyer to conduct a suit on its behalf is an officer and a public officer within the meaning of S. 60 (1) (i), C. P. Code. (*Mahomed Noor and Chatterji, J.J.*) **BANSI LAL v. MAHOMED HAFIZ.** 178 I.O. 141=5 B.R. 61=

19 Pat L.T. 768.
—S. 60 (1) (m)—*"Contingent or possible right or interest"—Bequest of income of property to husband and wife for life—Gift over of income and corpus to children—Interest of children—Attachability during lifetime of parents.*

A testator by his will directed that the residue of his estate should be divided into sixteen shares, and he bequeathed three of such shares to his nephew A and W, his wife and their issue. By a codicil of later date the testator revoked his bequest and in lieu thereof directed:

while both A and W were alive, a creditor attached the interest of P one of the sons of A and W in the three-sixteenths shares in the testator's residuary estate.

Held, that the interest of P under the codicil was, during the joint lives of A and W, nonattachable and

48 L.W. 884.

—S. 64—*Attachment subject to mortgage—Subse-*

sequent compromise, a transfer a portion of mortgagee in consideration of charge and releasing from the mortgage is not illegal by reason of S. 64, C. P. Code, more especially so when the mortgagee had already become entitled to possession even prior to the attachment. (*Bhidi, J.*) **KISHAN SINGH v. PRITAM SINGH.**

A I.R. 1938 Lah. 737.

—S. 64—*Properties mortgaged to a person—the proper purchasing attachment—*

were already in possession of a mort-

LAL v. MAHOMED HAFIZ.

178 I.O. 141=
5 B.R. 61=19 Pat L.T. 768.

—S. 64 (1) (i)—*Construction and scope—Salary—If restricted to salary of officers entitled to allowance under Cl. (h).*

There is no reason to restrict the scope of Cl. (i) of

C. P. CODE (1908), S. 65.

C. P. CODE (1908), S. 70.

to sale those items to sale in pursuance of their attachment, and was resisted in delivery proceedings by A. A subsequently brought a suit for sale of the properties,

ment-debtors had revived and there was no subsisting title in him as a certified purchaser. (*Mukherjee, J.*) THAKUR DAS NATH v. KESHAB CHANDRA GHOSH.

42 C.W.N. 497.

—Scope—Purchase benami for plaintiff—
possession by certified purchaser—Suit, if

exists over the property just as it did prior to the sale. The sale being void, A becomes a simple mortgagee and can bring a mortgage suit. (*Harrell, J.*) MARIVADDA NADAR v. RAMANUJ.

... brings a case within the purview of S. 66, C. P. Code, is that there must be a suit against the certified purchaser or anybody deriving title from him, on the

—S. 65—Proper

—Proper time—

proceedings may be taken in connexion with the confirmation of the sale by the judgment debtor whose property is sold. The vesting of the property in auction-purchaser is not postponed till the final decision of the proceedings started by the judgment debtor. (*Mir Ahmad, J.*) RAM DITTA MAL v. CHARAT SINGH. 177 I.C. 555—11 R. Pesh II—A.I.R. 1938 Pesh 49.

subsequently disposed or his representative, the bar of S. 66, C. continued for twelve a title quite independent of the purchase made at the execution sale. (*Mukherjee, J.*) THAKUR DAS NATH v. KESHAB CHANDRA. 42 C.W.N. 497.

—S. 66—Scope—Relief in suit dependent on declaration of title as against certified purchaser—Suit, if barred.

—S.

for answer to an objection under S. 66, C. P. Code (*J. K. Ghose and Patterson, JJ.*) ALI AHMED v. SHAMSHUN NESSA. 111 W.N. 1059—A.I.R. 1938 Cal 602.

MUKUND DAS NANDI DALAL v. AJIT KUMAR NANDI. 67 O.L.J. 320—A.I.R. 1938 Cal 874.

—S. 68—Transfer to Collector for execution—
Effect—Objection to sale—To which Court to be made. 47 AND 68—EXECUTING COURT. 1938 O.W.N. 758.

—Revenue Manual, Rr. 998 and
commissioner sitting *aide sale* on
by rules—Jurisdiction of Civil

—S. 66—Applicability—Suit against assignee of
certified purchaser.

The objection in
suit against an ass
Ghose and Patterson
SHUNNESSA.

... is transferred to the Collector for
execution under S. 68, C. P. Code, the jurisdiction of the

—S. 66—Pu
aside with cons
judgment debtor—
debtor—Suit agas
If maintainable.

Certain property was sold in execution of a money-decree against defendants 2 and 3 and purchased by the plaintiff's predecessor in the benami of defendant 1 and was taken possession of by him. The sale was subsequently set aside with the consent of defendant 1 on an application under O. 21, R. 90, C. P. Code, filed by defendants 2 and 3 who dispossessed the plaintiff. The plaintiff sued the defendants to recover possession of the property.

Held, that the suit was not barred under S. 66, C. P. Code, as it was not really against any person title under a purchase certified by the Court, as pleaded by that section. Defendants 2 and 3

(*Hasan, JJ.*) RAM CHANDRA v. NAKHDOOM SINGH. 172 I.C. 555—1938 O.L.R. 21—1938 O.W.N. 40—1938 A. 26—10 R.O. 193—A.I.R. 1938 Oudh 62.

—S. 70—Sale by Collector—Acceptance of bid after receipt of order of High Court staying proceedings—Validity—Cancellation—Legality.

Where a Collector accepted a bid after the receipt of the order of the High Court staying proceedings, the

F.C.)

C. P. CODE (1908), § 70.

—S. 70 (1)—Rules framed under by C. P. Government R. 11 (u)—Procedure to be followed after bid—Collector, if can ignore last bid and hold informal sale himself.

G. P. CODE (1908), S. 73.

salary of the judgment-debtor. (*Lobo, J.*) HINDU CO-OPERATIVE BANK v. MAHADEV KALIANJI.

177 I.C. 195=11 B.S. 51=A.I.R. 1938 Std 175.

—S. 73—Applicability—Execution of award

matters as are provided for in S. 115, C. P. Code. (*Greenfield F.C.*) SITARAM v. RATANLAL.

—S.

by S 16

C. P. CODE, S. 51 (x) 1938 A.I.J. 444 (F.B.)

—S. 73—Appeal—Order between rival decree-holders

—Ss 73 and 115 and O. 22, Br. 8 and 12 and

S. 28—Application for

its—Maintainability—In

other remedies open—

jurisdiction.

Where an insolvent after adjudication and before discharge presented an application for rateable distri-

—S. 73—Assets held by the 'Court'—Moneys re-

Court The moneys so received, while they are in his hands, are "assets" held by such Civil Court. (*Stone C.J.*) JAYANARAYAN v. DHANRAJ

173 I.C. 38=10 R.N. 276=A.I.R. 1938 Nag. 14.

Certain decree-holders applied for execution of decree in a Court of Small Causes, their decrees being of that Court. The Small Cause Court attached the salary of

ble distribution along with other decree-holders in the money received in the High Court by attachment of the

Manohar Lall J.) JAGDEO SAHU v. BHIMRAJ BANSI-DHAR. 177 I.C. 269=4 B.R. 803=11 R.P. 138.

C. P. CODE (1908), S. 73.

—S. 73—*Assets*—Amount deposited by judgment-debtor under O. 21, R. 89—*Liability to rateable distribution*

K. Ghose and Edgley, JJs.) CHITTARONG TIRUPATI
CO-OPERATIVE BANK, LTD. v.
TRADES BANK, LTD. 176 I C
42 C W N. 810

—S. 73—*Assets*—Preliminary mortgage decree obtained by judgment debtor—Attachment by holder of money decree—Attaching decree-holder obtaining final decree for sale and bringing properties for sale—Sale proceeds—If assets available for distribution—Right of rival money decree-holder against mortgagee (judgment debtor) to rateable distribution.

mortgaged properties to sale in execution of the final

various processes of the Court have been resorted to, would also amount to assets which would still remain

rateable distribution—*Appeal*.

An order refusing a prayer for rateable distribution is one under S. 73 and not under S. 47, C. P. Code, sub-S. (2) of S. 73 gives the aggrieved party a right to

—S. 73—*Rateable distribution* way of—*Appropriation of—Rs. Costs payable under decree—If*

The holder of a decree who te by way of rateable distribution c sum in any way he likes. It is the decree debt, namely, the amount of the decree proper and the costs awarded, that he is able to get as much as he does get by way of rateable distribution. It would be clearly inequitable and unfair he has received the money that the satisfaction of the first item that what he has received goes every rupee of his debt if the entire decree amount be regarded as a single debt or equally towards the payment of both the debts contained in the decree if the decree amount proper and the costs are regarded as two debts. (King, J.) GOPALA RAO v LAKSHMINARASAMMA. 1938 M W N. 1210.

—Ss. 73 and 47—*Rateable distribution—Appeal—Question as to locus standi of decree holder's agent.*

Y. D. 1938—16

C. P. CODE (1908), S. 73.

Where the question of rateable distribution is solely between the two rival decree-holders, the decision of

debtor is pre eminently interested and a decision on that question is no doubt one which will also have effect between the decree-holder and the judgment-debtor so far as the execution, discharge or satisfaction of the decree is concerned. Therefore an order of the execution Judge treating an execution application as *ultra vires* holding that the agent who filed it has no locus standi is appealable under S. 47. (Almond, J.C. and Mir Ahmad, J.) PUNJAB NATIONAL BANK LTD v. HUKAM CHAND SHAH. 177 I.O. 672—11 B. Pesh. 39—A.I.R. 1938 Pesh. 63.

—S. 73 and O. 38, R. 11—*Rateable distribution—Procedure—Application for execution—Necessity*

before judgment, applied after obtaining his decree to direct the said third person to pay the attached amount

application for execution in attachment of the property need not be applied for if it has already been attached under that order. (Sharpe, J.) R. N. PANDAY v. MOHAMMAD KASIM KHAN. 1938 Rang L R 565

—S. 73—*Sale proceeds held by Sub-Judge, First Class—Power of Senior Sub-Judge to call for them to his Court*

Where sale proceeds are held by the Sub Judge, First

ment debtors—*Some of them only common*

For rateable distribution it makes no difference in law that the parties are two in one case and three in the

against two of them and a sale is held in execution of his decree, former decree-holder is entitled to rateable distribution in the sale proceeds. (Ram Lall, J.) FATEH DIN v. DIWAN CHAND. A I.R. 1938 Lah. 801.

—S. 73—*"Same judgment-debtor"—X obtaining decree against firm by serving summons on two persons as partners—Y obtaining another decree against them*

C. P. CODE (1908), S. 73.

two and three others individually—Y bringing certain properties to sale in execution—Right of X to get rate-

Held, that the decree of X against the firm was in effect a decree against the two partners individually and consequently they were the common judgment-debtors in the two decrees and X was, therefore, entitled

—Ss 73 and 63—Same property of judgment debtor attached by two Courts of same grade and sold by one—Right of decree holder in other Court to rateable distribution

S. 73 is to be read together with S. 63. Where the

decrees, prior to the actual receipt of the assets, and the decree holders in all such Courts are entitled to rateable distribution under S. 73. In such cases no application for execution is necessary to be made to the Court which held the assets, before the receipt of the assets. (Tet Chand, J.) SIMLA BANKING AND INDUSTRIAL CO., LTD. v. INDO SWISS TRADING CO., LTD.

A.I.E. 1938 Lah. 754.

—S. 73—Scope—If affected by Amending Act IX of 1937.

The amendment of S. 60 by S. 3 of Act IX of 1937 does not affect the provisions of S. 73. Thus a decree-holder has still a right under S. 73 to come in for a share in the rateable distribution of salary attached under a decree, though his suit in which may have been brought after J

KEWALMAL v. RODRIGUES

11 B.S. 31

—S. 80—Applicability—If the properties mortgaged to Secretary of State under

C. P. CODE (1908), S. 80.

District Magistrate, under S. 15 (4) of the Police Act, making a demand of a certain amount of money as an

MULL v. SECRETARY OF STATE, 17 Pat 345 = A.I.E. 1938 Pat 556.

—S. 80—Notice—Contents—Alternative claim not mentioned—If can be claimed in suit,

lesser claim which is not mentioned S. 80 cannot derogate from have the suit tried on the issue notice. (Grille, J.) SECRETARY

OF STATE v. NAGORAO TANKO.

A.I.R. 1938 Nag. 415

—S. 80—Object of notice—Contents—Interpretation—Rule as to.

The object of giving two months' notice to the Government which is necessitated in S. 80, is to give which is about ment may, if it and restitution if without recourse

being had to a Court of law in which Government might be mulcted in costs. It is necessary to import a little commonsense into notices under S. 80. The Court should look at the wording of the notice and interpret it in the light of commonsense. It is not necessary for the plaintiff to state in his notice the full details of his claim. When the object of the notice is plain and is achieved, and there has not been any violation of the spirit and intention of S. 80, the notice should be treated as valid notice. (Grille, J.) SECRETARY OF STATE v. NAGORAO TANKO. A.I.E. 1938 Nag. 415.

—S. 80—Official Assignee—Suit against, in respect of release of an insolvent's right—Notice, if necessary.

C. P. Code.

S. 80 C. P. Code was not a deed capacity sect of A. C. J. OF

of a mortgage to which the Secretary of State for India in Council is a party as being a mortgagee of some of the properties under the Land Improvement Loans Act, notice under S. 80, C. P. Code, is necessary; and in the absence of such notice the suit against him (Pandurang K SECRETARY OF STATE FOR NAIDU. 1938 M.W.N. 280

—S. 80—Compliance—N

of validity—Statement of cause of action.

To state a cause of action it may be sufficient to give a legal description by which a particular cause of

—S. 80—Official Receiver—Right to notice—Rival creditors—Inter-ver is entitled to

promissory note by certain assignees of the note, and the debtor filed an inter-pleader suit and where the Official Receiver raised a plea that he ought to have been given notice under S. 80, C. P. Code, of a claim to which a Receiver to be an act purporting his official capacity

C. P. CODE (1908), S. 80.

so as to attract the application of S. 80, C. P. Code. (*Niyogi, J.*) NARAYANCHANDRA v. SURENDRANATH. 1938 N.L.J. 264 = A.L.R. 1938 Nag. 449.

—S. 80—*Strict compliance with Necessity—Notice to Registrar, Co-operative Societies—Proper service—Test.*

The provisions of S. 80, C. P. Code, are imperative and must be strictly complied with. Where a notice to

C. P. CODE (1908), S. 92.

ISHAR SINGH.

10 B. Pesh. 57 =

173 I.C. 813 = A.I.R. 1937 Pesh. 81.

—S. 91—Scope—Absence of sanction—If bar to maintainability of suit—Failure to raise plea of want of sanction—Effect—Plea in second appeal—If open. See TORT—NUISANCE. 1938 M.W.N. 262.

—Ss. 92 and 47—*Appeal—Orders for carrying out scheme.*

Orders are passed merely for carrying out a scheme are orders in execution, and appeals lie thereunder S. 47. (*Motily and Dunkley, JIN v. U.P.U.*) 177 I.C. 919 =

11 R.R. 184 = A.I.R. 1938 Rang. 363

—*Applicability—Suit by person claiming "property against rival trustee—Relief*

claimed in individual capacity

Where a person claims to be a representative capacity

—S. 80—*Suit against Official Receiver of estate for arrears of rent—Notice—If necessary.*

In a suit against an Official Receiver of an estate recovery of arrears of rent notice under S. 80 necessary as omission of receiver to pay rent is an act purporting to have been done by him in his official

individual capacity and not in a representative capacity

Ss. 86 and 87, C. P. Code, relate to an important matter of public policy in India and the express provisions contained therein are imperative and must be observed. Where a suit was brought against the

trustee not one for appointing a new trustee nor for vesting any property in a trustee and does not fall under any heads from (d) to (g) or under head (A) of S. 92. A suit by a person claiming to be a mutawalli of a cer-

which has that he is entitled to

was obtained and the suit was that the Railway was a co being sued, it was held that the record to support the contention corporation and that it was directly contrary to the admission of the plaintiff. It was further held that the

a suit against
of
C.

The fact that the Railway was allowed to defend the suit on the merits could not amount to a waiver of privilege as the provisions of ss 86 and 87, C. P. Code, are imperative, and having regard to the purpose which they serve, they could not be waived in such a manner. (*Sir Lancelot Sanderson.*) GAEKWAR

J.J. JAMIAL LAKHAL V. MUHAMMAD SHAKIL

A.I.R. 1938 Lah. 869.

—S. 92—*Applicability—Trust funds deposited with*

40 L.W. 511 = A.I.R. 1930 Mad. 899.

—S. 92—*Applicability—Trust properties—Breach of trust by female trustee—Suit by person claiming to succeed to office as next trustee for relief on ground of breach of trust—If falls under section.*

A suit in respect of properties forming the subject-

from taking the
S. 91, C. P. Code
taking of the Gr
(*Almond, J. C.*)

public purposes
of temple
to maintain

C. P. CODE (1908), S. 92.

Although it would be unreasonable to hold, having regard to the evidence in a particular case, that the properties held by the Mahant of a temple belong to any idol or to the temple, or to the members of the *panth*

the obligation to maintain the institution for purposes which can only be regarded as public charitable purposes it may fairly be said that such purposes within the mean-
S. 92 is not limited to trusts if
Trusts Act but must certainly i
and Sec. 11.) DHORIBHAI C.

40 Bom L.R. 1041-42

-S. 92—'Interest'—Meaning of.

'Interest' in S. 92, C. P. Code, denotes an interest which must be a present and substantial and not a re-

—H 42—Parties—Suit for removal of trustee—
Maradar from trustee—If necessary party.

—S. 92—Public or private trust—Provisions in favour of both private individuals and public.

There is no hard and fast rule that, merely because there are certain provisions in favour of private individuals and certain others in favour of the public, therefore, the case falls within or without the class of public trusts to which S. 92, C. P. Code, applies. The Court must look to the real substance of the trust and the primary intention of the creator of the trust in every case. (*S. K. Ghose and Patterson, JJ.*) MASSIRAT HOSSAIN v. HOSSAIN AHMAD CHOWDHURY.

176 I.C. 842-11 R.C. 182-42 C.W.N. 345-
A.I.R. 1938 Cal 278

—S. 92—Public trust—Temple—Makani—Properties held by—Dedication—Evidence of.

Public user for a long period without objection can be relied upon as strong evidence of a public user. Where properties have been acquired by a mahant of a temple and have descended from chela there is a presumption that they had dedicated to religious uses. (*Broomfield and S. Dhoribhai Dadabhai v. Pragnasini*).

40 Bom L E. 1041 → A.I.R 1938 Bom 471.

—§ 92—Removal of *mutiswalli*—Discretion of

bursements of the trust for which he was prosecuted and acquitted only on a technical ground. He had disobeyed the directions of the settlor regarding the disposal of the income of the trust property. He had a *locus penitentiae* but had not profited by the warning which

received their dues under the trust deed for many years and payments were in arrears. The lower Court, while

C. P. CODE (1908), S. 92.

finding mutawalli grossly negligent, was influenced by sentiment and sympathy and merely warned him.

Held, that the mutawalli had shown by his conduct to be entirely unfit to administer wakf and should be

of lower Court not being in-
soning or exercised judicially,
by the High Court. (*Mosely*
MYE DIN v. U MYA.

$$177 \text{ I C. } 234 = 11 \text{ R E. } 107 =$$

A.I.B. 1938 Reg. 166.

9. 07. 2000

after the institution by three persons as plaintiffs, two die, the suit does not become defective or incompetent. There is no provision at all in the Code for recourse being had to the advocate-general or collector during the of a suit or proceedings in appeal. The constitution of the valid institution of a suit and has no reference to any other stage. The persons who filed the suit within the leave of the advocate-general or collector are not to be deemed to be one plaintiff and as such three persons, why one of the plaintiffs in the

—S. 92—Scope—Public charitable trust—Management vested in members of family—Dispute among parties—Reference to arbitration—Award dealing with management and laying down scheme for future management—Suit to make award decree of Court—If falls under S. 92.

Where an arbitrator is required to investigate the nature of the management of various charitable trusts by the parties in management thereof and is also asked to lay down a scheme for the future management of the

ing is to safeguard the interests of the institutions or obtain directions for their proper management. A suit cannot be brought by the directors of a corporation to prevent the sale of its assets.

1000 Hl. v. N. 22, 6-10 L. v. 742=
(1938) 2 M.L.J. 972.

—S. 92—Sust under—Maintainability—Allegation as to breach of trust—Necessity.

The argument that in the absence of an allegation of breach of contract in the plaint the suit is not maintain-

■ A suit under that section lies not only in case of any alleged breach of trust, but also in case of any alleged mismanagement of the trust. The intervention of the Court is deemed necessary for the administration of a trust, if it be a trust for public purposes of a charitable or religious nature. (*Mya Bai v. Shree Sai Baba*)

C. P. CODE (1908), S. 83.

and Sharpe, J.J.) M. E. MITCHLA v. A. M. MITCHLA.
1938 Rang. L. 276=177 L.C. 851=
11 E.R. 175=A.I.R. 1938 Rang. 339.

—S. 93—Powers of Collector—Grant of sanction for suit—Jurisdiction to impose conditions—Condition that suit to be filed within two months—If has putation—Period of two months of order or date of receipt of or
The Collector exercising unde

the suit and in respect of the reliefs which are sought and are obtainable in such suit; any other restrictions either in the matter of the institution or in the conduct of the suit would be *ultra vires*. A condition imposed by the Collector that the suit should be instituted within two months is illegal and may be ignored, although if the suit is filed long after the grant of sanction, the Court has a discretion to refuse to pass a decree in the suit on the ground of unnecessary delay. In any case, assuming that the Collector can impose such time limit the period would not commence to run until the order of sanction is made known to the parties. (*Venkataramana Rao, J.*) RAMACHANDRAYYA v. NARASIMHAM.
1937 M.W.N. 1319.

—S. 93—Powers of Collector—Grant of sanction for suit—Jurisdiction to impose conditions—Condition that suit to be filed within two months—If has putation—Period of two months of order or date of receipt of or

claim in its entirety provided a certain condition is fulfilled and dismisses it in its entirety if that condition is not

party in whose favour a decree has been passed may

any other proceeding (*Khundkar, J.*) GHOSE v. SAKHI KANTA BEHARA 42 C.W.N. 492

—S. 96—"Decree"—Order under O. 41, R. 5, refusing stay of execution pending appeal—Appealability. See C. P. CODE, S. 2 (2) 40 Bom.L.R. 1198.

—S. 96 (3)—Applicability—Oath taken in pursuance of offer to be bound by—Decree thereon. See OATHS ACT, S. 11. 172 I.C. 421.

—S. 97—Appeal from preliminary decree—Final decree passed during its pendency—Appeal, if competent.

An appeal filed from a preliminary decree is competent, although during its pendency a final decree is passed but it is not appealed against. (*Addison and Din Mohammad, J.J.*) JOTI PARSHAD v. GIRNARI MAL. 40 P.L.R. 123.

—S. 98—Difference of opinion among Judges hearing first appeal—Procedure to be adopted. See LETTERS PATENT (ALL), CL. 27 AND C. P. CODE, S. 98. 1938 A.W.R. (H.C.) 712=

A.I.R. 1938 All 641 (F.B.).

C. P. CODE (1908), S. 100.

dent is present and pleads judgment against himself. Where both the parties were absent, but the Court acting on the statement of a relative of the appellant who was not however his duly accredited representative and on the facts as disclosed in the evidence on record

when could not be attacked—
See C. P. CODE, O. 26,
1938 N.L.J. 392

—S. 100.

Concurrent Findings

Discretion.

Error of law.

Finding of fact.

Jurisdiction

Misreading of evidence

Mixed question of law and fact.

New case.

New plea.

Question of fact

Question of law.

Second appeal.

—S. 100—Concurrent findings—Question of fact permanent lease of waste

law that in no circumstance be granted in respect of waste lands belonging to a trust. The questions is one of degree, depending upon a number of circumstances and therefore a question of fact; where the into any error of law and use of law in dealing with ty of a permanent lease of waste lands belonging to a trust, the concurrent finding Courts that a particular lease was granted able cause cannot be interfered with in although some of the above

—S. 100—Discretion—Wrong exercise of—Interference—Amendment of plaint.

Where a judge allowing an amendment of the plaint has proceeded on a wrong view of the law so that he could not have applied his mind to the question whether he should or should not, in his discretion allow the amendment, the High Court would interfere in second appeal though the matter was one in the discretion of the lower Court. (*Stone, C.J. and Bose, J.*) LACHHMAN-SING v. MAHENDRA LAL. 175 I.C. 728=

11 E.R. 72=1938 N.L.J. 198= A.I.R. 1938 Nag 388.

—S. 100—Error of law—Test—High Court, if can hear appeal on facts.

There is an error of law when a Court's finding proceeds upon a misconception of the real nature of the issue in the case, when several facts admitted or proved are not considered in their relation to each other and weighed as whole, when a certain legal consequence and proved facts art of admissible point at issue is such an error of 100, C. P. C.

C. P. CODE (1908), S. 100.

(Courtney Terrell, C.J. and James, J.) RAMKESHWAR SINGH v. KESHO PRASAD SINHA,
1938 P.W.N. 202—19 Pat L.T. 645—
A.I.R. 1938 Cal. 500

—S 100—Finding of fact—Intention to separate from joint family—Finding that institution of tary act and did not evidence clear intention to separate

unequivocal intention on the part of the member concerned to separate from the other members of the joint family, is one of fact, and the High Court in second

documents.

A finding of the lower appellate failure to appreciate the true necessity in ancient documents other documents of recent original recitals, cannot be supported and *Khandkar, J.*) LAKSHI JAGADISH CH SUR. 177 I.O. 477—11 R.C. 247—42 C.W.N. 837—A.I.R. 1938 Cal. 541.

—S 100—Finding of fact—Interference—Find-

(Jain, J.) GULABJI BHOSLA
176 I.O. 464—11 R.L. 2

—S. 100—Finding of fact—Court omitting to consider circumstances erroneously holding them to be inadmissible.

A finding on a question of fact is open to challenge in second appeal if the lower appellate Court has in arriving at that finding refused to consider certain circumstances erroneously holding them to be either inadmissible or irrelevant (*Beckett, J.*) KRISHAN CHAND v. KANSHI RAM 40 P.L.R. 705

—S. 100—Finding of fact—Interference—Mistaken view of burden of proof.

Where the evidence has been viewed in the lower appellate Court on a mistaken application of the rule as to burden of proof, its judgment is vitiated on a point of law and is open to attack in second appeal (*Beckett, J.*) HIRCHAND v. HIRA LAL 40 P.L.R. 682—A.I.R. 1938 Lah. 760.

—S 100—Finding of fact—Interpretation of facts found by lower Court.

C. P. CODE (1908), S. 100.

Where the lower Court has arrived at a certain finding of facts, and the facts are clear but the dispute relates not to the facts but to interpretation of facts by the

execution of document is genuine.

To be true that a document could be executed only

presence of the thumb marks on the document in question, but there are certain other attending circumstances which have influenced his mind while formulating his conclusion that execution of document is genuine, his finding with in second appeal, (*ad, J.*) HUKAM CHAND A.I.R. 1938 Lah. 357. fact—Suit for damages for as absence of reasonable and of malice—Interference in

1938 P.W.N. 783

—S 100—Finding of fact—Circumstances of the case

PRASAD SINGH. 1938 A.L.J. 988—1938 A.W.R. (H.C.) 682—1938 E.D. 829.

—S 100—Misreading of evidence—Correction in

has been set aside and that can have misapplication of in second appeal. T JAIWANTI 1938 W.N. 808

within the meaning of S. 14, Limitation Act, is a mixed question of law and fact and can be questioned in second appeal, provided that the lower Court's findings of fact are not interfered with 36 I.C. 702, followed. (*Skemp, J.*) MAYA SINGH v. UDHAM SINGH.

40 P.L.R. 631—A.I.R. 1938 Lah. 704.

—S 100—New case—Interference—Lower Court basing judgment on new case made out for first time in appeal—Failure to adequately consider, more important aspect—Effect of the case

Where a Judge sitting in appeal bases his judgment on a new case made out for the first time in appeal, and it is clear that the new case has coloured and influenced his consideration of the facts and his decision on another aspect of the case, which, although treated by the appellate Court as a minor aspect, turns out in fact to be the most important aspect of the case, and it appears that the Court has not adequately considered that as

C. P. CODE (1908), S. 100.

and consequently has arrived at a wrong conclusion judgment is liable to be set aside in second appeal. (*Davis, J.C. and Mehta, J.*) ARAB JHANGLU & JAL SHAH. A.I.R. 1938 Str

—S. 100—New plea—Plea of estoppel—If raised for first time.

C. P. CODE (1908), S. 100.

second appeal. (*Manohar Lall, J.*) BINDESHWARI PRASAD v. LAL MUNGARI LAL. 10 R.P. 315=

172 I.C. 198=1937 P.W.N. 762=

1E Pat L.T. 814=A.I.R. 1937 Pat. 642

—S. 100—New plea—Plea of want of sanction under S. 91, C. P. Code—If may be raised in second appeal. See TORT—NUISANCE.

1938 M.W.N. 262.

—S. 100—New plea—Point of law—If can be raised.

A point of law on the fact—lower appellate Court may time in second appeal. (*Bern Collister, Baijoo and Ga PANDEY v. NANDA BUDHA*

I.L.R. (193

1938 A.L.J.

1938 A.W.R. (

1938 E.D. 628=A.I.R. 1938 All. 396 (P.B.)

possession.

It is a question of fact whether adverse possession has been proved, but where the decision is whether adverse possession shall be inferred from facts, it is not a question of fact; it is a question of the legal inference to be drawn from facts. (*Davis, J.C. and Mehta, J.*)

TAHILRAM TACKCHAND v. MT. MIRAL.

176 I.C. 549=11 E. 22=A.I.R. 1938 Sind 132

—S. 100—Question of fact—Question as to fraud—Finding on—Finality.

—S. 100—Question of fact—Question whether pro-

175 I.C. 866=11 R.B. 10=40 Bom.L.R. 359=

A.I.R. 1938 Bom 231.

—S. 100—New plea—Question of law—If can be raised.

1938 P.W.N. 259=19 Pat L.T. 193=

A.I.R. 1938 Pat. 372

—S. 100—Question of fact—Rebuttal of statutory presumption.

can be raised.

es
fa

with findings of fact of the lower appellate Court, legal inferences have been drawn from either, for instance, the possession is whether a transfer is made with intent

A finding that a house belonged to a person is a pure finding of fact and as such it is not within the jurisdiction

—S. 100—Question of law—Inference from facts—Interference.

G. P. CODE (1908), S. 100.

The pro-
tion of
SINGH

11 B.

facts.

Where certain facts are found and an inference is

to this that the inference must be one which necessarily flows from it. (*Fazl Ali*,
J) NARAIN PANDE v. GAYA RAI, 174 I.C. 388 =
4 B.R. 423 = 10 R.P. 510 = 19 Pat L.T. 398 =
A.I.R. 1938 Pat. 147.

S. 100—Question of law—Inference from proved
facts—Inference.

Where a Court is dealing with the question as to

appeal whether the facts found by the lower Court
justified the conclusions in law that they have drawn.
(*Davis, J.C. and Mehta, J.*) VIKARBAI v. PARMANAND
JHANGALIAS, A.I.R. 1938 Sind 206

S. 100—Question of law—Legal inference from
proved facts

The proper legal inference to be drawn from the
proved facts of a case is a point of law. (*Broomfield*
and *Maclean, J.J.*) BABASAHEB APPASHI v. LAXMA
NAPPA RAMAPPA, 40 Bom.L.R. 1015 =

G. P. CODE (1908), S. 101.

Question of law—Question of onus.
It is not arise every time an infer-
ence of proved facts. It can only
arise if the onus is used as the
whole case because the tribunal

S. 100—Second appeal—Dismissal of appeal
under O. 41, R. 11—Right of second appeal.
The mere fact that an appeal is dismissed summarily

the case are not dealt

S. 100—Second appeal—Order of abatement of
appeal.

An order that the appeal abates not only with regard
to the appellant who has died but with regard to all
defendants, comes within the definition of
an appeal as such is appealable (*S. K. Ghose and*
Paterson, J.J.) SABITIRAI v. JUGAL KISHORE,

43 O.W.N. 41 = A.I.R. 1938 Cal. 639.
S. 100—Second appeal—Summary dismissal of
appeal under O. 41, R. 11—Second appeal—If it is.

Quere—Whether a second appeal lies to the High
Court against the dismissal of an appeal summarily
under O. 41, R. 11 C.P. Code? (*Manohar Lal, J.*)
CHOTOO LAL v. MST. BIBI SERINA

19 Pat L.T. 210 = A.I.R. 1938 Pat. 202.
S. 102—Applicability—Money suit bona fide

It does not apply to a suit being *ad*
judged although the only claim
is by the plaintiff is a money
claim. (*Prasad, J.*) BHATTACHARYA v.
L.R. 1938 2 Cal. 21 =
3 B.L.R. 681 = 6 C.L.J. 211 =
A.I.R. 1938 Cal. 270.
Suit for money and for

Code, bars a second appeal for the money, if the claim is *bona fide*
in addition, the suit is *bona fide*
for an injunction, a second appeal
would not be barred. (*Prasad, J.*)
AUDIAPPA CHETTI v. TALUK PIAVIDI
48 L.W. 512 = 1933 M.W.N. 931 =
1938 Mad. 911 = 122 2 M.L.J. 283.

Applicability—Order in proceedings
under S. 295, Succession Act, See C.P.
CODE, O. 41, R. 1. AND S. 101.

A.I.R. 1938 Sind 25 (F.B.)
Ss 101 and 105 (1)—Return of plaint for want
of jurisdiction—Remand by appellate Court—Dismissal
of appeal—Second appeal—Compromise—
Question of jurisdiction—If it can be raised.
In a suit brought in Murari's Court the defendant
pleaded that the Civil Court had no jurisdiction
amplified that plea by arguing that the Court

S. 100—Question of law—Question, if Court had
lost its character as such

The nature and quantum of evidence required to prove

C. P. CODE (1908), S 104.

had exclusive jurisdiction. The Munsif accepted this argument and ordered the plaint to be returned to the plaintiff for presentation to the proper Court. A first appeal was brought and the appellate Court held that the Civil Court had jurisdiction and remanded the suit for disposal on the merits. The Munsif then decreed the suit and an appeal was brought to the District Judge and the District Judge dismissed that appeal. The defendant then brought a second appeal and took as his first ground that the lower Court had erred in holding that the Civil Court had jurisdiction.

Held, that no appeal lay from the order of the lower appellate Court the first time when the jurisdiction question came before it, but that as the case had been

C. P. CODE (1908), S 109.

P. CODE, O. I. R. 10 (2) AND S. 107.

1938 M W N. 75.

—S. 109—Final order—Order dismissing appeal as premature.

An order dismissing an appeal as premature cannot be said to be a final order within the meaning of S. 109, C. P. Code. (*Thomas, C.J. and Zia-ul-Hasan, J.*)

RAGHURAJ SINGH v. LALA HARI KISHAN LAL
173 I C 865=10 R.O. 231=1938 O L R. 143=
1938 R D 405 (2)=1938 O A 231=
1938 A W R. (O.C.) 26=1938 O W N. 331=
A I R 1938 Oudh 107.

—S. 109—Leave to appeal—Validity—Commitment for finding of contempt for breach of injunction.

ASHARFI SINGH

I.L.J.

177 I O 450=11 R.A. 193

1938 A L J 720=1938

1938 R D 714=

—S. 104 (2) and O 43, R.

Reversal in appeal—Second

Revision.

by any
injunction
betted a
is of

relates solely to the question of jurisdiction, it can be taken up in revision

GULZARI SINGH v R

177 I O 131=

1938 O A

1938 O W

—S. 105 (1)—Q

raised. See C. P. CC

1938 A

—S. 105 (1) and

appeals under Agra I

ACT, S. 249.

1937 A L J. 1237.

1938 Rang L R. 330=A I R. 1938 Rang. 333.

to withdraw the appeal may, in proper cases, transpose the parties, making the respondent-appellant and the appellant-respondent though it is not bound to

Customs Act—Appeal to Privy Council—Grant of certificate.

—S. 107 and O. I. R. 10 (2)—Power of Court—Addition of party as respondent in the appeal. See C.

Civil Court was not deprived of jurisdiction in the matter by the Sea Customs Act, and demanded the suit

C. P. CODE (1908), S. 110.

C. P. CODE (1908), S. 110.

tions were pending in other provinces.

together on the ground that the High Court in part

Varadachariar
v. LAKSHMAYYA.
— 1938 M.W.N. 439—
I.R. 1938 Mad. 698—
(1938) 1 M.L.J. 492.

DIALL FOR INDIA v. NANK & CO

1938 M.W.N. 1132—(1938) 2 M.L.J. 904

— S. 110.
Affirming decree.
Construction.
Substantial question of Law.
Valuation

— S. 110—Affirming decree—Variation of
in favour of applicant—Right of appeal.

Where the High Court on appeal enhance
amount decreed by the trial Court to the applica
leave to appeal, the variation of the trial Court's
= no doubt all in favour of the applicant, and h
not have any appealable grievance against such
tion, but nonetheless the decree of the High Ct
not one of affirmance. The applicant is, ther

Leave—Grounds.

Even if the decree of the High Court affirms the
decree of the Subordinate Judge, where the appeal
involves substantial questions of law and the value of
the subject matter of the suit and of the appeal = above
Rs. 10,000, the High Court is justified in granting
leave to appeal to the Privy Council (Sir Lancelot

RAI
399—
836.

— S. 110 — Affirming decree—Suit comprising

— S. 110—Affirming decree — Several subject-
matters involved in suit—High Court decree confirming
decree of lower Court in respect of some but varying it in
respect of others—If reversing judgment—Leave to

In cases where parties claiming under various aliena
tions are brought before the Court, the mere fact that
the rules of procedure permit the claims to be joined in
one suit does not justify the decree being
single and inseparable decree when it
confirms the lower Court's decree in respect

or is not an affirming decree under S. 110, C. P. Code.
A single decree may comprise several decisions, and each
decision may relate to a distinct subject matter. The

widow who were directed by the decree to surrender
possession. The High Court by its decree allowed the
plaintiff's appeal, but dismissed the appeal of the alien-
nees from the widow of the last male holder. The
properties involved in each of the two appeals exceeded
Rs. 10,000 in value.

of future suits—If enough.

Under S. 110, C. P. Code, the question whether a
decree involves indirectly a claim or question respecting
property the value of which is Rs. 10,000 or upwards,
must be decided with reference to actual circumstances
at the time and not to circumstances, which are remote,

that future
if the property
at some time
est. Ho. Ag. C.
A SINGH v.
C.W.N. 298.
be construed
valuation

C. P. CODE (1908), S 104.

had exclusive jurisdiction. The Munsif accepted this argument and ordered the plaint to be returned to the plaintiff for presentation to the proper Court. A first appeal was brought and the appellate Court held that the Civil Court had jurisdiction and remanded the suit for disposal on the merits. The Munsif then decreed the suit and an appeal was brought to the District

Held, that no appeal lay from the order of the lower appellate Court the first time when the jurisdiction question came before it, but that as the case had been

Reversal in appeal—Second appeal—Competency—Revision.

relates solely to the question of jurisdiction, it can be taken up in revision. (*Zia-ul-F*

GULZARI SINGH v RAM ADHI
177 I.O. 131—11 R.O. 2
1938 O.A. 818—19
1938 O.W.N. 801—

—S. 105 (1)—Question of raised. See C.P. CODE, Ss. 10
1938 A.L.J. 720

—S
appeals or
ACT, S. 2

C. P. CODE (1908), S 109.

P. CODE, O. 1, R. 10 (2) AND S. 107.

1938 M.W.N. 75.
—S. 109—Final order—Order dismissing appeal as premature.

An order dismissing an appeal as premature cannot be said to be a final order within the meaning of S. 109, C. P. Code. (*Thomas, C. J. and Zia-ul-Hasan, J.*)

A.I.R. 1938 Oudh 107.
—S. 109—Leave to appeal—Validity—Committee for finding of contempt for breach of injunction.

such a criminal nature as to prevent an appeal. (*Lord Porter.*) BANNERJEE v. KUCHWAR LINE AND STONE LTD. 19 Pat L.T. 857—1938 P.W.N. 895—A.I.R. 1938 P.O. 295 (P.O.).

—S 109 (a)—Final order—Test.
Whether an order is a final order or not within S. 109 (a) of the C. P. Code depends upon the effect of the order.

1938 Rang L.R. 330—A.I.R. 1938 Rang. 333.
applicability—Original civil jurisdiction for enhancement of rent under Act—Application to High Court—Order refusing—Appeal to

to an appeal. withdraw his certain villages. Such an order as one passed in the exercise of original Civil jurisdiction falling under S. 109

the respondent has obtained any right under the appeal it is not open to the appellant to withdraw his appeal without permission. The Court, when granting leave to withdraw the appeal may, in proper cases, propose the parties, making the respondent-appellant and the appellant-respondent, though it is not bound to

—S. 109 (c)—"Fit case"—Question of jurisdiction of Civil Court—Question as to how under the Customs Act—Appeal to Prizy Council—Grant of leave.

preliminary issue, upon the objection that the suit. In appeal, the High Court held that Civil Court was not deprived of jurisdiction matter by the Sea Customs Act, and demands

—S. 107 and O. 1, R. 10 (2)—Power of Court—Addition of party respondent in the appeal. See C.

C. P. CODE (1908), S. 110.

for trial
was
vice
in wh

C. P. CODE (1908), S. 110.

and one general importance, the case was a direct one to be certified under Cl. (c) of s. 109, C. P. Code (*Varada chariar and Pandrang Row, JJ*) SECRETARY OF STATE FOR INDIA v. MARK & CO
1938 M.W.N. 1132 = (1938) 2 M.L.J. 904

— S. 110.

Affirming decree.

Construction.

Substantial question of Law.

Valuation

— S. 110—Affirming decree—Variation of decree in favour of applicant—Right of appeal

Where the High Court on appeal enhances amount decreed by the trial Court to the applicant leave to appeal, the variation of the trial Court's decree is no doubt all in favour of the applicant, and he cannot have any appealable grievance against such variation, but nonetheless the decree of the High Court is not one of affirmance. The applicant is, therefore, entitled to appeal to the Privy Council as of right with out showing that some substantial question of law is involved (*Tek Chand and Shimp, JJ*) HAKIM RAI v. GANGA RAM.
40 P.L.R. 300—

AIR 1938 Lah

— S. 110—Affirming decree—

different subject-matters and different

—Decree dismissing claim in resp

allowing claim in respect of others—

partis—Decree allowing one appeal

other—If one of reversal—Leave to ap.

In cases where parties claiming under various alienations are brought before the Court, the rules of procedure permit the claims to one suit does not justify the decree being for single and inseparable decree when the confirms the lower Court's decree in respect

another set of
widow of the
and the

ferred one by the plaintiff against the dismissal of part of his claim, and the other by the alienees from the widow who were directed by the decree to surrender possession. The High Court by its decree allowed the plaintiff's appeal, but dismissed the appeal of the alienees from the widow of the last male properties involved in each of the two appeals Rs 10,000 in value

Held, that so far as the decree allowed appeal, the decision of the High Court was valid and therefore a certificate should be issued granting

41 L.W. 614 = 1938 M.W.N. 439 =
177 I.C. 248 = 11 R.M. 301 = AIR 1938 Mad. 598 =
(1938) 1 M.L.J. 492.

— S. 110—Affirming decree—Leave to Grounds.

Even if the decree of the High Court affirms the decree of the Subordinate Judge, where the appeal involves substantial questions of Law and the value of the subject matter of the suit and of the appeal is above Rs 10,000, the High Court is justified in granting leave to appeal to the Privy Council (*Sir Lancelot Sanderson*) GAEKWAR BARODA STATE

40 Bom.L.R. 811 = 19 Pat. L.T. 689 = 174 I.C. 551 =
1938 M.W.N. 481 = 1938 O.W.N. 521 =
1938 A.L.J. 488 = 42 C.W.N. 705 =
1938 O.L.R. 218 = 1838 A.W.R. (P.O.) 123 =
47 L.W. 753 = AIR 1938 P.C. 165 =
(1938) 2 M.L.J. 11 (P.O.).

— S. 110—Affirming decree—Several

is not an affirming decree under S. 110

K E BOARD, MADRAS

1938 M.W.N. 298 = 47 L.W. 393 =

AIR 1938 Mad 631 = (1938) 1 M.L.J. 487.

— S. 110—Construction—"Indirectly"—Possibility

of future suits—If enough.

Under S. 110, C. P. Code, the question whether a

question respecting

0000 or upwards,

actual circumstances

which are remote,

possibility that future

extent of the property

tuted at some time

d (*Castillo, Ag C.*

ANDRA SINGH v

42 C.W.N. 298.

01 to be construed

nation less

C. P. CODE (1908), S 104.

had exclusive jurisdiction. The Mansif accepted this argument and ordered the plaint to be returned to the plaintiff for presentation to the proper Court. A first appeal was brought and the appellate Court held that the Civil Court had jurisdiction and remanded the suit for disposal on the merits. The Mansif then decreed the suit and an appeal was brought to the District

C. P. CODE (1908), S. 109.

P. CODE, O. 1, R. 10(2) AND S. 107.

1938 M W N. 75.

—S. 109—Final order—Order dismissing appeal as premature.

An order dismissing an appeal as premature cannot be said to be a final order within the meaning of S. 109, C. P. Code. (Thomas, C.J. and Zia ul-Hasan, J.)

—S. 104(2) and O 43, R. 1—Return of plaint—Reversal in appeal—Second appeal—Competency—Revision.

Where an order returning a plaint for presentation to proper Court, is reversed in appeal, no further appeal lies against that order in view of S. 104(2), C.P. Code, read with O 43, R. 1. But as the matter is one which relates solely to the question of jurisdiction, it can be taken up in revision. (Zia-ul-

GULZARI SINGH v RAM ADH

177 I.O. 131-11 R.O.

1938 O.A. 618-1

1938 O.W.N. 801-

—S. 105 (1)—Question of jurisdiction—If can be raised. See C. P. CODE, Ss. 104

1938 A.L.J. 720-A

—S 105 (1) and (2)—Appl
appeals under Agra Tenancy Act,
ACT, S. 249.

1937 A.L.J. 1237.

—S. 107 and O. 23, R. 1—Applicability—Appeal—Right to withdraw—Memo. of objection by respondent—If bar to withdrawal—Power of appellate Court to permit withdrawal of appeal—O. 43, R. 22(4).

in any way improved by O. 23, R. 1. The Court merely confers on the appellate Court the powers of an original Court, but none on the parties to an appeal. But an appellant is entitled as of an appeal, provided that the respondent has no interest thereunder. The fact objection by the respondent is not in view of the provisions of O. 43, R. 22(4).

the respondent has obtained any right under the appeal it is not open to the appellant to withdraw his appeal without permission. The Court, when granting leave to withdraw the appeal may, in proper cases, transpose

person so inhibited in breaking the injunction is of such a criminal nature as to prevent an appeal. (Lord Porter) BANNERJEE v. KUCHWAR LIME AND STONE CO. LTD. 19 Pat L.T. 657-1938 P.W.N. 895-

A.I.R. 1938 P.C. 295 (P.O.).

—S. 109 (a)—Final order—Test.

Whether an order is a final order or not within S. 109 (a) of the C. P. Code depends upon the effect of the

he rights of the appellate Court as a good and remains to upon the final

determination of the defendant's liability, the order is

1938 Rang L.R. 330-A.I.R. 1938 Rang. 333.

—S 109 (b)—Applicability—Original civil jurisdiction—Proceedings for enhancement of rent under Madras Estates Land Act—Application to High Court for writ of certiorari—Order refusing—Appeal to

of the Madras Estates Land Act enhancing the rents of certain villages. Such an order is one passed in the

(1938) 2 M.L.J. 164

—S 109 (c)—"Fit case"—Question of jurisdiction of Civil Court—Question as to bar under Sea Customs Act—Appeal to Privy Council—Grant of certi-

—S. 107 and O. 1, R. 10 (2)—Power of Court—Addition of party as respondent in the appeal. See C.

cal, the High Court held that the Civil Court was not deprived of jurisdiction in the matter by the Sea Customs Act, and demanded the suit

C. P. CODE (1908), S. 115

Other remedy open.
Powers of Court.
Subordinate Court.

—S. 115—Amendment of decree—Substantial amendment—If revisable. See C. P. CODE, SS. 152 AND 115. 1938 A.M.L.J. 88

—S. 115—Applicability—Order of Civil Court under S. 476 B, Cr. P. Code—Revision—Procedure—If governed by S. 115 or S. 439 Cr. P. Code—Nature of proceedings. See CR. P. CODE, S. 439.

to set
See B.

A.I.R. 1938 Pat 21 (S.B.).

—S. 115—Applicability—Presidency Small Cause Court

S. 115, C. P. Code, applies to suits and proceedings in the Presidency Small Cause Court. 41 Cal 323, Doubt but *Foil (Lori Withams, J.)* MAHOMED YUSUF v. ABDUL MAJID I.L.R. (1938) 2 Cal. 162 = 178 I.C. 111 = 42 C.W.N. 602 = A.I.R. 1938 Cal 571

—S. 115—Arbitration—Setting aside of award and supersession of arbitration—If a case decided. See C. P. CODE, S. 115—CASE DECIDED

1938 A.L.J. 813 (F.B.)

—S. 115—Award—Revision—Powers of Court

The powers of a Court of revision are strictly confined within the limits prescribed by S. 115, C. P. Code, and, unless a judgment is vitiated by any of the defects specified therein, no interference with it can be made by the revising Court. This principle is all the more applicable in cases of revision from an order making an award a rule of Court. (*Addison and Din Mohammad, J.*) TEJA SINGH v. ATMA SINGH. 177 I.C. 351 = 11 B.L. 289 = 40 P.L.R. 651 = A.I.R. 1938 Lah. 434

—S. 115—Case—If includes interlocutory orders

The word 'case' used in S. 115 is wide enough to include an interlocutory order and the High Court will interfere even in the case of such orders provided they otherwise fulfil the requirements of S. 115 (*Boze, J.*) KRISHNA KUMAR v. RADHAPLAL. 175 I.C. 107 = 10 R.N. 433 = A.I.R. 1938 Nag. 210

—S. 115—'Case decided'—Application for stay under S. 7(1)(a), U. P. Encumbered Estates Act—Dismissal—Revision.

The proceeding started by the filing of an application under S. 7(1)(a) of the U. P. Encumbered Estates Act is a fresh proceeding and, therefore, a case which terminates as soon as the application is dismissed. There is, therefore, a 'case decided' within the meaning of S. 115, C. P. Code, justifying interference by the High Court in revision. (*Sulaiman, C. J. and Harries, J.*) BABU RAM v. MANOHAR LAL I.L.R. (1938) All. 22 = 173 I.C. 157 = 1938 A.L.R. 98 = 10 R.A. 466 = 1938 R.D. 84 = 1937 A.W.R. 986 = A.I.R. 1938 All. 557 (F.B.)

—S. 115—Case decided—Final determination under O. 33, R. 1. See C. P. CODE AND S. 115. 1938 B.

—S. 115—'Case decided'—Order as to of plaintiff—When amounts to 'case decided'

The question whether an order allowing an amendment of the plaintiff is a 'case decided' depends upon the facts of the particular case. Where a plaintiff is permitted to amend his plaint in order to sue on an entirely

C. P. CODE (1908), S. 115.

different legal relationship between himself and the defendant from that relied upon in the original plaint, and when the entire nature of suit is sought to be altered, the order allowing amendment is a 'case decided' within the meaning of S. 115, C. P. Code. (*Weston, J.*)

1937 A.M.L.J. 104.

—S. 115—Case decided—Order giving leave to defend conditionally under O. 37, R. 3—Revision

An order giving leave to defend conditionally under O. 37, R. 3, C. P. Code, is an interlocutory order and does not amount to a 'case decided' within the purview of S. 115, C. P. Code. Even assuming the order not to

C. P. Code (*Addison and Abdul Rashid, J.*) MANOHAR LAL v. KAROBAR KHANDAN MUSHKARKA

I.L.R. (1938) Lah. 289 = 177 I.C. 778 =

10 R.L. 861 = 40 P.L.R. 69 =

A.I.R. 1938 Lah. 548.

—S. 115—Case decided—Order holding certain reliefs claimed as time-barred.

An order by Court holding the suit of a plaintiff time-barred in respect of certain reliefs claimed by him is a 'case decided' to that extent. (*Din Mohammad, J.*) DIWAN CHAND v. BEHARI LAL.

A.I.R. 1938 Lah. 507.

—S. 115—Case decided—Order under O. 9, R. 13 setting aside ex parte decree—Revision.

An order purporting to set aside an ex parte decree under O. 9, R. 13 is an order deciding a case within the meaning of S. 115, C. P. Code, and revision therefore lies. The fact that an appeal lies against an order made under O. 9, R. 13 refusing to grant an application to set aside an ex parte decree and that no appeal lies against an order granting an application to set aside a decree does not exclude the remedy by revision in the latter case, much more restricted though the remedy by revision is. (*Davis, J. C. and Lobo, J.*) ZENAB v. MAHOMED HAJI ALLAHDINO. 32 B.L.R. 703 = 174 I.C. 572 = 10 R.S. 284 = A.I.R. 1938 Sind. 76.

—S. 115—'Case decided'—Setting aside of award and supersession of arbitration—Revision—Competency.

A Court cannot be considered to have decided a case within the meaning of S. 115 C. P. Code, where it has set aside the award and superseded the arbitration pending a suit which is consequently to be tried by the Court. (*Brunet, Ag. C. J. Simal and Verma, J.*) GOVIND DAS v. INDRAMATI. 1938 A.L.J. 813 = I.L.R. 1938 All. 805 = 177 I.C. 981 = 11 R.A. 238 = 1938 A.W.R. (H.C.) 605 = 1938 A.L.R. 804 = A.I.R. 1938 All. 557 (F.B.)

—S. 115—Case decided—Subordinate Court—Order by District Judge under S. 36, Legal Practitioners Act declaring person out—Revision—Jurisdiction of High Court—Interference—Grounds—Cr. P. Code, S. 439—Government of India Act, S. 224 (2).

S. 36 of the Legal Practitioners Act confers a special

Cr. P. Code does not apply to such a case. Nor can it be revised under the Government of India Act, 1935. The jurisdiction to revise is, however, of an ex character and cannot be invoked except in of justice. If the Judge in passing the

C. P. CODE (1908), S. 115.

clear conception of the law on the subject or if he has failed to apply the law to the facts of the case and bases his finding on mere suspicion or conjecture, the High Court would interfere with the order. (*Abdur Rahman, J.*) SOMANNA, *in re*.

I L R 1938 Mad. 988 = 177 I C. 456 =
11 R M 331-1938 M. W. N. 426 = 47 L W. 578 =
A. I. R. 1938 Mad. 631 = (1938) 2 M L J. 100

—S 115—Court fee—Appeal requiring *ad valorem* court fee valued and miscellaneous appeal—Application for leave to appeal—Distinction—Jurisdiction—Refusal to exercise

T. 864

—S 115—Court fee—Decision as to—Revision—Decision favourable to plaintiff and decision unfavourable to plaintiff—Distinction—Jurisdiction—Refusal to exercise

The High Court has power to interfere and will interfere in revision against an erroneous decision of the trial Court adverse to the plaintiff in the matter of Court-fee. The question of court fee is not a matter which

Where, however, the decision is in favour of the plaintiff, it is not open to the defendant to apply to the High Court in revision, because in the first place he is not a party to the dispute between the Crown and the plaintiff, and, secondly, he has a remedy, should the decision on the merits be against him in bringing the matter of the court fee duty to the notice of the appellate Court under S. 12 of the Court-Fees Act, and, thirdly and

RAMKHELAWAN SAHU v. BIR SURENDRA SAHAI.
16 Pat 766 = 172 I C 810 = 4 B R 178 =
10 R P 349 = 18 Pat L T. 977 =
A I R. 1938 Pat 22 (F B).

—S 115—Court-fee—Order of Court calling upon plaintiff to make good deficiency in court-fee—Revision, if lies.

Where the trial Court requires the plaintiff to make

utions under that section. (*Rhude, J.*) PEOPLES BANK OF NORTHERN INDIA v. KANAVA LAL.

I L R 1938 Lab 377 = 176 I C 764 =
11 B L J. 234 = 40 N L R 1039 =
A I R. 1938 Lab. 80.

C. P. CODE (1908), S. 115.

—S. 115—Court fee—Order demanding additional court fee for memorandum of appeal—Revision—Order favourable to appellant—Distinction

An order demanding additional court fee on a memorandum of appeal is revisable under S. 115, C. P. Code, as it amounts to a refusal to exercise jurisdiction; but an order accepting the court fee paid as sufficient is not open to revision as then there is no refusal to proceed with the appeal. In such a case jurisdiction is not

on the side dismissed. (*Stone, C.*)

BALAJI DHUMNAJI v. M. S. T.

I L R. 1933 Nag 106 =

O R N 298 = 1938 N L J. 1 =

A I R 1938 Nag 122 (F B).

—S. 115—Declaration as *ex parte*—If revisable—Subsequent *ex parte* decree, not appealed against—Remedy—Proper procedure

Where the petitioners were declared *ex parte*, even if the order was wrong on the merits, the High Court has no jurisdiction under S. 115, C. P. Code, to interfere with such an order. Where a decree is passed after declaring certain persons as *ex parte* the proper procedure for those persons is to have preferred an appeal against the decree and not to come by way of revision

—S 115—Defective judgment—Interference.

considered finding of a lower Court and that interference in revision was necessary (*Bose, J.*) KISANGOPAL v. UMRAO KESHO RAO.

175 I C 430 =

10 R N. 456 = A I R 1938 Nag. 216.

—S 115—Discretion—Wrong exercise of discretion under S. 5, Limitation Act—Interference. See LIMITATION ACT, S 5

19 Pat L T. 309.

—S 115—Discretionary orders—Revision—Intervention.

Where the question relates to the exercise of discretion which is vested by law in the lower Court, except in very exceptional cases, it is not proper for a Court of revision to interfere with the way in which the lower Court has exercised its discretion (*Varalakshmi, J.*) VENKAYYA v. VENKATA RAO. 1938 M W N. 925 = 48 L W. 517 = A I R. 1938 Mad 979 = (1938) 2 M L J. 642.

—S. 115—Error of law.

A revision petition is incompetent if the question involved is one of law and not of jurisdiction. (*Addison and "Jai Rashed, J J"*) MANABIR SINGH v. JAGAT 40 P L R 461.

3 115—Error of law.

where lower appellate Court has committed an error in law in drawing certain pre-emptions and in reaching certain conclusions it would not afford any ground for revision. (*Addison and Din Mohammad, J J.*) HUKAM CHAND v. RAMJI DAS.

A I R. 1938 Lab 357.

—S. 115—Error of law—Decision of question of law—When interfered with—jurisdiction—Order

C. P. CODE (1908), S. 115.

under S. 151 made without jurisdiction—Interference.

The High Court will not generally interfere with a decision on a question of law, as the lower Court has

NAURANGI LAL MARWARI

16 Pat 729=

10 R.P. 320=172 I.C. 225=

1937 P.W.N. 836=11 Pat L.T. 826=

A.I.R. 1937 Pat. 647

S. 115—Error of law—Revision, if competent.

—Order

clear

—Revision

The High Court as a Court of revision is not expected to weigh the evidence which is led before the lower Court. But when it is found that there is no evidence at

subject or has failed to apply the law to the facts of the case, it acts illegally, and in any case with material irregularity, justifies revision. (*Abdur In re.*)

1938 M.W.N.

A.I.R. 1938

S. 115—Illegally or with material irregularity—Order dismissing application as barred by—Disregard of S. 4, Limitation and refusal—Revision—Interference.

Where a Court dismisses a suit or an appeal on the ground of limitation it does not refuse to exercise jurisdiction. On the contrary it takes cognizance of the suit and exercises jurisdiction by holding that on a point of law the suit fails. To ignore the plain terms of S. 4 of the Limitation Act is to deprive a litigant of the Statutory privilege given to him by that section, and a refusal to apply the section in a case in which it does apply amounts to exercising jurisdiction illegally and with material irregularity, justifying interference in revision under S. 115, C. P. Code.

VELRAPPA v. IRATAPPA.

10 R.B. 529=

A.I.

S. 115—"Illegally or with material irregularity"—Order adding person pauper under O. 33, R. 1—Revision—Wrong view as to "necessary wearing apparel"—If justifies interference.

The High Court has no authority to interfere in revision with an order of a Court declaring a party to be a pauper for purposes of O. 33, R. 1, C. P. Code. The fact that the lower Court wrongly holds that the ornaments

O. P. CODE (1908), S. 115.

S. 115—Interference—Grounds—Failure to consider relevant point—if justifies interference. See MADRAS HINDU RELIGIOUS ENDOWMENTS ACT, S. 9 (5). A.I.R. 1938 Mad 321.

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issuing the
(Veston.)

1938 A.M.L.J. 97.

S. 115—Interlocutory order—Order allowing application for leave to sue in forma pauperis—Revision application by defendant—Interference—Discretion of High Court.

According to the practice of the High Court of does lie under S. 115, C. P. granting leave to a pauper

the fact that the
ie government
r to the High
(Dhavit and

A.KUER.

4 M.E. 598=

10 R.P. 632=19 Pat L.T. 101=

A.I.R. 1938 Pat 209.

S. 115—Interlocutory order—Question of jurisdiction.

jurisdiction, the Court will not a question of jurisdiction

SINGH v. KUNDAN MAL.

1938 A.M.L.J. 74.

S. 115—Jurisdiction—Absence—Appeal incompetent but entertained—Order of appellate Court—Final Court itself without

ode, ought not
to restore an

jurisdiction or founded on

jurisdiction, although the

jurisdiction. (*Row*

JHUNJHUNWALA v.

178 I.C. 41=

19 Pat L.T. 111=

A.I.R. 1938 Pat 447

S. 115—Jurisdiction—Absence of Collector's order in appeal under S. 23 (2), Mamlatdars' Courts Act setting aside order of Mamlatdar on findings of fact—Revision—Interference.

The High Court under S. 115, C. P. Code, has jurisdiction to interfere with an order passed by the Collector under S. 23 (2) of the Mamlatdars' Courts Act, setting aside the order of the Mamlatdar.

BABAH v. BALA FAKIRA MAHAR.

I.L.R. 1938 Bom 259=173 I.C. 808=10 R.B. 381=

40 Bom.L.R. 104=A.I.R. 1938 Bom 159.

S. 115—Jurisdiction—Absence—Reference under S. 18, Land Acquisition Act—Termination by decree in suit declaring acquisition invalid—Subsequent order of compensation under S. 48 of Land Acquisition Act—Jurisdiction to make—Revision—Interference. See

1938 N.L.J.

Absence of—S

A. 41, R. 11=

O. 41, R.

C. P. CODE (1908), S. 115.

clear conception of the law on the subject or if he has failed to apply the law to the facts of the case and bases his finding on mere surmise or conjecture, the High Court would interfere with the order. (*Ahluwalia v. Somanna*, 1938.)

I L R 1938 Mad 988 = 177 I C 456 =
11 B M 331 = 1938 M W N 426 = 47 L W 678 =
A I R 1938 Mad 631 = (1938) 2 M L J 100.

—S 115—"Court"—District Judge and Assistant Judge disposing of appeal relating to amendment of Voters under Bombay District Municipal Act—Orders in—Revision. See BOMBAY DISTRICT MUNICIPAL ACT, SS. 11 (1) (c) (iv) AND 22. A I R 1938 Sind 153.

—S 115—Court-fee—Appeal requiring *ad valorem* court fee valued and miscellaneous appeal—Application by respondent after disposal of appeal and remand for order staying proceedings until payment of full court-fee—Rejection—Revision—Interference. See COURT-FEES ACT (AS AMENDED IN BIHAR AND ORISSA) SCH. I, ART. 1 AND SCH. II, ART. 11.

18 Pat. L. T. 861

—S 115—Court-fee—Decision as to—Revision—Decision favourable to plaintiff and decision unfavourable to plaintiff—Distinction—Jurisdiction—Refusal to exercise.

The High Court has power to interfere and will interfere in revision against an erroneous decision of the trial Court adverse to the plaintiff in the matter of Court fee. The question of court fee is not a matter which really concerns the defendant, though he may raise that question, and the Court in deciding a question of court fee is deciding an issue as between the defendant, but is not deciding an issue between the Crown and the plaintiff. If the decision is in favour of the plaintiff, it amounts to a refusal of jurisdiction to try the issues as between the defendant, and is subject to the revision of the High Court under S. 11.

Where, however, the decision is in favour of the plain

the court fee duty to the notice of the appellate Court under S. 12 of the Court-Fees Act, and, thirdly and most important, as between the plaintiff and the defendant the trial Court has not refused to exercise its jurisdiction to decide the case on the merits (*Courtney Terrell, C.J., James and Manohar Lal, J.J.*)

—S 115—Court-fee—Order of Court calling upon plaintiff to make good deficiency in court-fee—Revision, if lies.

tions under that section. (*Rhade, J.*) PEOPLES BANK OF NORTHERN INDIA v. KANAVA LAL.

I L R 1938 Lab 377 = 176 I C 761 =
11 R L 231 = 40 P L R 1039 =
A I R 1938 Lab 80.

C. P. CODE (1908), S. 115.

—S. 115—Court-fee—Order demanding additional court-fee for memorandum of appeal—Revision—Order favourable to appellant—Distinction.

An order demanding additional court-fee on a memorandum of appeal is revisable under S. 115, C. P. Code, as it amounts to a refusal to exercise jurisdiction; but an order accepting the court fee paid as sufficient is not open to revision as then there is no refusal to proceed with the appeal. In such a case jurisdiction is not affected, nor is the other side damaged. (*Stone, C.J., Bose and Guer, J.J.*) BALAJI DHUNWAI v. MST. MUKTABAI.

I L R 1938 Nag 106 =
173 I C 329 = 10 B N 298 = 1938 N L J 1 =
A I R 1938 Nag 122 (F.B.).

—S. 115—Declaration *ex parte*—If revisable—Subsequent *ex parte* decret, not appealed against—Remedy—Proper procedure.

Where the petitioners were declared *ex parte*, even if the order was wrong on the merits, the High Court has no jurisdiction under S. 115, C. P. Code, to interfere with such an order. Where a decree is passed after declaring certain persons as *ex parte* the proper procedure for those persons is to have preferred an appeal against the decree and not to come by way of revision under S. 115 against the order declaring them *ex parte*. (*Madhavji Nur, J.*) THAVASIKANNU THEVAR v. SANKARALINGAM PILLAI.

176 I C 825 =
11 B M 169 = 1938 M W N 17 =
A I R 1938 Mad 217.

—S 115—Defective judgment—Interference.

Where there had not been any real consideration of

considered finding of a lower Court and that interference in revision was necessary (*Bose, J.*) KISAN v. UMRAO KESHEO RAO.

10 B N 456 = A I R

—S. 115—Discretion—Wrong under S. 5, Limitation Act—TATION ACT, S. 5.

—S. 115—Discretion—Intervention.

Where the question relates to a right which is vested by law in very exceptional cases, it is not revision to interfere with the Court has exercised its discretion. (*Venkata Rao, J.*) VENKAYYA v. VENKATA RAO.

11 L W 517 = A I

—S. 115—Error of law.

A revision petition is incompetent

ground for revision. (*Addison and Din Akbar*) HUKAM CHAND v. RAMJI DAS.

A I R 1938 L. —S. 115—Error of law—Decision of law—When interfered with—Jurisdiction.

C. P. CODE (1908), S. 115.

(Wort, A. C. J. and Manohar Lal, J.) VASISTHA NARAIN SINGH v. KANDHAI LAL DURGA PRASAD.

177 I O 138 = 4 B E 793 = 11 B P. 129.

—S. 115—Material irregularity—Dismissal of pauper application as barred by S. 47, C. P. Code—Revision.

—S. 115—Material irregularity—Ex parte decree—Order setting aside on insufficient grounds—Revision—Interference.

The applicant sued for a declaration that she was validly divorced from her husband. The application was referred to arbitration and extension of time was granted until certain date. On that date applicant appeared through her pleader but the defendant did not appear and the reference was superseded. A date was fixed for hearing for a certain date. Again the defendant was not present and an ex parte decree was passed. The applicant applied for revision. The High Court set aside the decree and granted the application.

32 S L R 703 = 174 I O 572 = 10 R S 264 = A I R 1938 Sind 76

—S. 115—Material irregularity—Objection that pleader engaged by opposite party should not be allowed to appear—Objection accepted in lower Court—Interference. See C. P. CODE, S. 151.

A I R. 1938 Rang 241.

—S. 115—Miscellaneous proceedings—Orders under S. 3, Charitable and Religious Trusts Act—If revisable. See CHARITABLE AND RELIGIOUS TRUSTS ACT S 3 1938 O W N. 1054

—S. 115—New case—Execution of instalment

C. P. CODE (1908), S. 115

—S. 115—Order granting discharge to guardian—If revisable. See GUARDIAN AND WARD ACT, S. 41 (3) AND (4). (1938) M W 188 (F B).

—S. 115—Order rejecting review application—Revision.

if no appeal is made by the first party, although an appeal is allowed to the District Judge. BABU RAM (1938) A I R 22 = (1938) A I R 88 = 1937 A W R 986 = A I R. 1938 A I R 8. Appealable order not under Ss. 144 and 145 C P CODE, Ss. 144 and 145 19 Pat L T 118

—S. 115—Other remedy open—Interference.

Although there is no bar to the exercise of powers under S. 115, C. P. Code, yet the powers being discretionary.

Limits of rule.

High Court will not interfere in revision where there is another remedy open to the party. But the other remedy must be allowed by law. UNG AHMIN v. (1938) Rang 360.

Other remedy—Order refusing delivery 99—Revision—Interference. See C. P. CODE, S. 115 103 11 Pat L T 833.

—S. 115—Powers of Court—Amendment of decree.

The Chief Court has power under its revisional jurisdiction to amend a decree so as to make it conform with the judgment. (Thomson, C J. and Zia ul Hasan, J.)

—S. 115—Powers of Court—Power to act on its own motion.

The Judicial Commissioner's Court in an appropriate

default clause in the decree and wants to save limitation by making payments made by the respondent during the

auction purchaser's application for confirmation of

application
the matter
Kao.

C. P. CODE (1908), S. 115.

S. 115—Jurisdiction—Court subordinate—District Judge's order declaring person to be tout under S. 36, Legal Practitioners Act—Jurisdiction to revise—C. P. Code, S. 439—Government of India Act (1935), S. 224 (2).

O. P. CODE (1908), S. 115.

S. 115—Jurisdiction—Refusal to exercise—Court declining to further proceed with execution on wrong view of law—Revision—Interference. If a Court, taking a wrong view of the law, assumes

High Court is, however, necessarily of an exceptional character, and cannot be invoked except in furtherance of justice. S. 439 of the Cr. P. Code has no application to the case, and the order cannot be revised under that section. Nor can the order be revised under the Government of India Act of 1935, by reason of sub-cl. (2) to S. 224 of the Government of India Act of 1935. (*Abdur Rahman, f.*) • SOMANNA, *Inf. re.*

I.L.E. 1938 Mad. 888=47 L.W. 578=

1938 M.W.N. 426=177 I.O. 456=11 E.M. 334=

A.I.R. 1938 Mad. 634=(1938) 2 M.L.J. 100

S. 115—Jurisdiction—Failure to exercise—Refusal to enquire claim under O. 21, R. 58. See C. P. CODE, O. 21, R. 58—ENQUIRY. 1938 A.M.L.J. 23

S. 115—Jurisdiction—Failure to exercise—Refusal to order rateable distribution—Interference. See C. P. CODE, SS. 73 AND 115. 177 I.O. 269.

S. 115—Jurisdiction—Order allowing rateable distribution—Revision.

The Court executing the decree has jurisdiction to

S. 115—Jurisdiction—Wrong exercise of—Erroneous decision on valuation of suit—Interference. See COURT-FEES ACT, S. 7 (iv) (c). 42 C.W.N. 192.

S. 115—Leave to sue—If revivable.

An order allowing a person to sue as a pauper is revivable if it otherwise fulfils the provisions of S. 115. (*Boat, f.*) KRISHNA KUMAR v. RADHELAL

175 I.O. 107=10 E.N. 483=A.I.R. 1938 Nag. 210.

S. 115—Leave to sue in forma pauperis—Order granting—Revision—Grounds.

Where in an application under O. 33, R. 1, C. P. Code the lower Court in deciding the question as to whether a cause of action is disclosed as required by cl. (d) of R. 5 of O. 33, does commit an irregularity in relying on a statement made by the defendant contesting the application and in fact in permitting him to be cross examined with a view to elicit such an admission, that would not be a sufficient ground for setting aside in revision an order granting leave to sue in forma pauperis where apart from the admission of the defendant there was in fact sufficient material in the plaintiff's allegations to

Limitation—Order without adjudicating limitation—Interference.

in interfere in revision in a case which is time-barred and where the lower

an order without adjudicating on the al, 651, Rel. on, TAL TRADING

1 E.E. 31(1)=

1938 Rang. 87.

Application be-

of Courts not to

sion to give landed property as security instead of cash deposit—Refusal without fixing amount of security and without applying mind in the case—Revision—Interference. See C. P. CODE, O. 21, R. 90 (1) (PATNA AMENDMENT), PROVISIO (1) (d). 17 Pat. 107.

execution proceedings against the judgment-debtor, and if it is not granted, the person aggrieved by such an order is that decree-holder and if he does not choose to agitate it further the judgment-debtor has no locus standi to prefer a revision under S. 115 against that order

■ P. CODE (1908), S. 115.

(Wort, A C J. and Manohar Lal, J.) VASISTHA

○ P. CODE (1908), S. 115.

—S. 115—Order granting discharge to guardian—
HUMAN AND WARDS ACT, S. 41
(1938) M.W.N. 188 (F.B.).
refusing review application—
ejecting an application under O.

proceedings mentioned in the proposed plaint but makes use of the information obtained therefrom, the use of such information is irregular and it amounts to a material irregularity in the conduct of the proceedings in the lower Court which vitiates the order passed therein.

Per Mackney, J.—Where the execution proceedings have been referred in the plaint, the Court may be entitled to look at these proceedings, but on looking into them, the Court can only discover what defence is likely to be used, it cannot at that stage, consider the validity of that defence. (*M/s Bu and Mackney, J.J.*) KARIM v KYAUKTAGA GRANT LTD A I R 1938 Rang 453

—S. 115—Material irregularity—Ex parte decree—Order setting aside on insufficient grounds—Revision—Interference

The applicant sued for a declaration that she was validly divorced from her husband. The case was referred to arbitration and extension of time was ordered until certain date. On that date applicant sent through her pleader but the defendant was not present and the reference was superseded. The case was fixed for hearing for a certain date. Again the defendant was not present and an ex parte decree was passed. The defendant applied to have the ex parte decree set aside alleging various grounds for his absence. The Judge before whom the case application and set aside the ex parte decree that his predecessor made

A I R 1938 Sind 76

—S. 115—Material irregularity—Objection that pleader engaged by opposite party should not be allowed to appear—Objection accepted in lower Court—Interference. See C. P. CODE, S. 151.

A I R, 1938 Rang 241.

—S. 115—Material irregularity—Objection that pleader engaged by opposite party should not be allowed to appear—Objection accepted in lower Court—Interference. See C. P. CODE, S. 151.

—S. 115—New case—Execution of instalment decree—Application based on default clause—New case

sion application under S. 115, C P. Code if no appeal lies to it, and it can interfere with the order of the first Court if no appeal lies to the High Court, although an appeal might lie from the first Court to the District Court (*Sulaiman, C J and Harris, J.*) BABU RAM v MANOHAR LAL. I L R (1938) All 22 = 173 I C 157 = 10 E A 466 = 1938 A L R 98 = 1938 R D 84 = 1937 A W R 786 = A I R 1938 All 6.

—S. 115—Other remedy—Appealable order not appealed against—Revision—Order under Ss. 144 and 151—If open to revision. See C P CODE, Ss. 144 AND 151. 18 Pat L T 118.

—S. 115—Other remedy open—Interference. Although there is no bar to the exercise of powers under S. 115, C P Code, yet the powers being discre-

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40 P L R J. & K. 29

—S. 115—Other remedy open—Non interference—Limits of rule.

High Court will not interfere in revision where there is another remedy open to the party. But the other open to the applicant in revision must be conclusive remedy allowed by law, (*and Dunkley, J.*) MAUNG AHMIN v. A I R 1938 Rang 360.

—S. 115—Other remedy—Order refusing delivery under O. 21, R. 99—Revision—Interference. See C. P. CODE, O. 21, R. 103. 18 Pat L T 833.

—S. 115—Powers of Court—Amendment of decree

The Chief Court has power under its revisional jurisdiction to amend a decree. (*the J. RAG*)

A I R 1938 Oudh 107.

—S. 115—Powers of Court—Power to act on its own motion.

The Judicial Commissioner's Court in an appropriate case can exercise powers of revision on its own motion if it is satisfied that the decree is erroneous. (*the J. RAG*)

A I R. 1938 Pesh 81.

—S. 115—Revision—Amendment of decree

without, the decree holder bases his cause of action on the default clause in the decree.

113.

An appeal against an order made on an application under S. 144, C.P. Code, ought to bear an *ad valorem* court fee (*Henderson, J.*) **BIRENDRA NATH v. SURENDRA NATH.** 42 C.W.N. 252

—S. 144—Order under—Appeal—Court fee.

able on appeals from orders under S. 144, C.P. Code. An application under S. 144 does not execute an existing decree, but it unexecutes a decree which had ceased to exist. (*Baguley and Mosely, J.J.*) **MAHITWE v. TOKE.** 1938 Rang L.R. 63

—Ss 144 and 151—Order under—Appeal—Revision.

In a proceeding started under S. 144, C.P. Code the Court held that S. 144 did not apply but granted

the rights of the was capable though it was or under both ion lay against RNATH DAS v

19 Pat. L.T. 118= 1938 P.W.N. 310

—S. 144—Pre-emption suit—Order permitting creditors of pre-emptor to withdraw deposit in Court—Reversal—Liability to refund.

Where the creditors of the pre-emptors were parties to an order permitting them to withdraw amount deposited in Court, when that order is reversed, are in justice and equity liable to make restitution and refund the amount withdrawn by them. They cannot resist restitution on the plea that they were not parties to the pre-emption suit, for the word 'parties' in S. 144, C.P. Code, must be taken to include their representatives and further representative does not mean only a party's legal representative.

O. P. CODE (1908), S. 145.

releasing half share in property—Decree and sale remaining as a whole—Application by decree holder for compensation—Maintainability.

In execution of a compromise decree against a Hindu father and his sons, joint family property of the father and sons was put up for sale and purchased by the decree-holder, the sale was duly confirmed and full

and the sale, which itself was not affected, stood as a whole. The decree-holder then made an application for

the property would not guarantee the title, and the maxim *caveat emptor* applied, (2) that the fact that the sons brought an action for declaration of the invalidity of the decree as against them did not affect the principle.

had to be considered against the sons; 144, C.P. Code,

could, it at all, be claimed only against the sons and not against the father and that on no principle was the decree-holder entitled to compensation against the father judgment-debtor under S. 151, C.P. Code, (*Port and Parma, J.J.*) **PHULCHAND RAM MARWARI v. NAURANGI LAL MARWARI.** 172 I.C. 225=

16 Pat. 729=10 R.P. 320=1937 P.W.N. 836= 18 Pat. L.T. 826=A.I.R. 1937 Pat. 647.

—S. 144—Scope and object of—Decree entitling party to take charge of institution—Execution—Possession of building in which institution is located also taken under colour of decree—Reversal of decree—Duty to restore possession of building—Plea that building was taken possession of by force or otherwise—If open

A party taking possession of any thing under colour of his decree is bound to make restitution of everything that he takes possession under colour of the decree on reversal of that decree. Where a party entitled under his decree to hold charge of an institution, also takes

C. P. CODE (1908), S. 145.

(Addison, J.) SHEIKH RAHIM-UD DIN v. MURLI DHAR. A I R. 1938 Lah 593.

—S. 145—Father's liability as surety—Son's interest—If can be protected against.

S. 145 permits the execution of a decree (passed against a stranger) against the surety as though it were a decree passed against the surety a party only for a limited purpose. father has become liable as surety against a stranger, the interest of taken in execution of the decree.

decree-holder has power to sue the surety instead of taking recourse to execution under S. 145 does not preclude the decree holder seeking a shorter and less expensive remedy of execution under S. 145 (Stone, C.J. and Purnani, J.) PANDURANG GADIBA KUNBI v. ABDUL HUSSAIN ISAJI BOHRI 173 I.C. 950-10 R.N. 333=A.I.R. 1938 Nag 148.

—S. 145—Security bond—Procedure for enforcement. See SURETY—SECURITY BOND.

—S. withdraw : of time

—Ss 148 and 149—Discretion of C. for payment of deficit court fee on plaint—Extension—Right of plaintiff to claim

provides for defective documents being retrospectively validated The Court must, however exercise its

—Ss 148 and 149 and O. 20, Br 3 and 6—Power to extend time—Existence of jurisdiction—Necessity—Preliminary decree fixing time for payment of deficient court fee—If can be extended.

To extend time under ss. 148 and 149, C P Code, the Court must have a case before it in regard to which

an end on the pronouncing of the judgment and signing of the

O. 20, provide during the C

Verma, J.J.) HENTIRASAI CHANDASANI

177 I.C. 824=1938 A.W.R. (H.O.) 495=

11 B.A. 218=1938 A.L.R. 785=1938 A.L.J. 673=A.I.R. 1938 All 407

—S. 148—Scope—Extension of time of deficient court fee—Jurisdiction to grant if filed, S. C.P. CODE, SS. 2 (2) AND 14.

1937 A.L.J. 1316=1938 A.W.R.

O. P. CODE (1908), S. 149.

—S. 149—Appellate Court finding court-fee fixed by trial Court to be insufficient—Duty to grant time.

Where in the trial Court the defendants themselves had stated that the court-fee was payable on a certain amount and the Court after enquiry had fixed that amount as the proper value of the suit, the appellate Court, finding the deficiency, should give time for payment of the deficiency. (J) ABDUL

40 F.L.R. 33, —S. 149—Applicability—Decree on payment of court-fee—Court-fee deposited after three years—Execution of decree—Starting point—Limitation Act, Art. 182

Where in a suit for dissolution of partnership, a defendant is given a final decree for a certain sum on his paying the requisite court fee, the proceedings in that Court do not become final until that Court either

he order it fee, is begins fee was MU RAM L 848= F 917=

1938 A.L.R. 799=1938 A.W.R. (H.O.) 538=A.I.R. 1938 All 539,

—S. 149 and O. 33, R. 15—Application to sue as pauper dismissed—Court-fee paid beyond limitation but within time granted by Court—Date of institution of suit.

Where a person files a suit in forma pauperis within the period of limitation but his application to sue as pauper is dismissed and he is required to pay court-fee on a date which went beyond the limitation period and the court fee is so paid at a time granted under S. 149, C P Code the suit should be regarded as filed when

The discretion conferred on the Court by S. 149,

and not as used in the Limitation Act. A thing should be presumed to be done bona fide, if it is done honestly whether it is done negligently or not for the purposes of

C. P. CODE (1908), § 149.

—S. 149 and § 7, R. 11—Discretion of Court—Plaint presented on last day of limitation with insufficient court fee—Return for payment of proper court-fee within time fixed—Re presentation within time fixed with request for further time—Order granting same—Payment of full court-fee and re presentation in time—Effect of § 11 barred by limitation.

Under O. 7, R. 11, C. P. Code, the Court may admit a plaint though written on paper insufficiently stamped if the plaintiff on being required by the Court supplies the requisite stamp paper within the time allowed by the Court, the plaint is a valid plaint and must be filed on the date on which

presented on 4-10-1928, with only a one rupee stamp. On 5-10-1928, it was returned directing payment of the court-fee. On 19-10-1928, the plaintiff presented the plaint with two weeks' court-fee. On 20-10-1928, the Court allowed the plaint to be filed on 20-10-1928.

been presented on 4-10-1928, with only a one rupee stamp. On 5-10-1928, it was returned directing payment of the court-fee. On 19-10-1928, the plaintiff presented the plaint with two weeks' court-fee. On 20-10-1928, the Court allowed the plaint to be filed on 20-10-1928.

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—S. 149—Discretion of Court—Plaint presented on last day of limitation with insufficient court fee—Return for payment of proper court-fee within time fixed—Re presentation within time fixed with request for further time—Order granting same—Payment of full court-fee and re presentation in time—Effect of § 11 barred by limitation.

—S. 149—Discretion under—Exercise of—Rejection of application for leave to sue as pauper—Time for payment of court fee. See C.P. CODE O. 33, Rr. 5 AND 15. 19 Pat L.T. 8

—S. 149—Memorandum of appeal filed with insufficient court fee—Application under S. 149 rejected—Appeal if filed in time.

Where a memorandum of appeal was filed within the time allowed by law, with insufficient Court fee, the valuation of the appeal was subsequently reduced and an

unstamped or insufficiently stamped appeal will not amount to a valid plaint. See *Chariar and Pandrang Rao v. RAMAYYA*.

177 I.C. 1
47 L.W. 211—1938 M.W.N. 71—
A.I.R. 1938 Mad 318—(1938) 1 M.L.J. 514.

—S. 149 and § 33, R. 2—Pauper petition—Subsequent application to pay Court-fee—Effect of—Discretion of Court. See C.P. CODE, O. 33, R. 2 AND S. 149. 1938 Rang L.R. 629.

C. P. CODE (1908), § 151.

—S. 151.
Abuse of process.
Appeal.
Applicability.
Ends of justice.
Execution.
Inherent jurisdiction.
Inherent power.
Order under.
Other remedy.
Powers of High Court.
Restitution.
Review.
Scope.
Stay of suit.

—S. 151—Abuse of process of Court—Court incorrectly fixing period of grace for payment of arrears of rent—Payment after date fixed but within proper time—Ejectment—Power of Court to redress wrong.

Where a decree for ejectment wrongly fixed the period of grace for payment of the arrears and the tenant in ignorance of his remedy kept quiet and paid the arrears after the date but within the proper time allowable under the law, but the landlord nevertheless applied under S. 61 of the Oudh Rent Act and obtained an order of ejectment, such an order amounts to an abuse of the process of the Court and S. 151, C. P. Code, is the only section under which the tenant could get redress of the wrong done and the Court can make an order of restitution of the property. (J.M.)

931 =

383.

final

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ing of a final decree on that certain payment has not been given. A dismissed owing to restore such application order passed on an inherent jurisdiction. (J.) MUNNI SINGH

J. COLLECTOR OF BENARES.

1938 A.W.E. (H.C.) 711—1938 A.L.J. 1055.

—Ss. 151 and 141—Appeal—Orders for restitution after setting aside order of confirmation of sale—Principle involved.

Simply because an order is passed under the inherent powers it does not necessarily become appealable. If however the inherent powers are used to expand a remedy in order to do justice to cover a case not within the exact words of but within the purpose of a procedure, the order is appealable.

Therefore an order for restitution aside an order of confirmation of proceedings is in fact not an order under S. 144 but an order under S. 151, and by analogy is appealable. (*Stone, C.J. and Digby, J.*) MT. CHANPABAI v. DAULATRAM SHARMA.

A.I.R. 1938 Nag. 326.
—S. 151—Appeal—Restitution—Order for—Appealability—Remedy—Revision. See C. P. CODE, Ss. 144 AND 151. 19 Pat L.T. 111.

C. P. CODE (1908), S. 151.

—S 151—Appeal—Restitution—Order under S. 144 read with S. 151—Appealability—Revision. See C. P. CODE, SS 144 AND 151. **11 Pat L T. 118.**

—S 151—Applicability—Inherent powers—When to be exercised.

It is a well recognised principle that where a party has another remedy, and will not adopt or negligently

V. KAMDHARAN PRASAD SAHU, 178 I C 41=
11 B R 49=11 R P. 204=1938 P W N 313=
19 Pat T 111= A I R 1938 Pat 447

O. 7, R. 10 is not restricted only to those cases in which the Court for want of territorial jurisdiction returns the plaint. A plaint returned on the ground of

UPPER COURT AND LOWER COURT—INTERFERENCE.
 Where in a suit a party objects that a pleader engaged by the opposite party should not be allowed to appear as he had been previously engaged by him in connexion with the same litigation, and the lower Court after hearing both the parties, accepts the objection, an application by the pleader to set aside an order does not lie either under S 151 or S 115, C P Code or under S 85, Government of Burma Act (*Baguley and Alois ly, JJ*) **MAUNG THA TUN v BRAJAHORI WADIA DER 177 I C 511=11 R R 137=**
A I R 1938 Rang 241

—S 151—Execution—Injunction to stay execution sale—Grant of—inherent powers. See C P CODE O. 39, R 1 **16 Pat. 738.**

—S. 151—Execution—Stopping of sale—Inherent powers.

Under S. 151, C. P. Code, the Court has full power to correct *suo motu* defects which it discovers in its proceedings. It cannot be said that the Court should proceed with the sale of property brought to its notice that by reason of attachment, misdescription in the defect any sale held is bound to Court is entitled to pause and if concerned should correct an obvious error. **(I. C. S.) KISHEN LAL v. MAN MA...**
1938 A M L J. 97

—S. 151—Execution sale—Setting aside—Power of Court—Sale in execution of mortgage decree without

Court for payment to the decree holder would any, but the decree holder did not implead the execution proceedings amount for him, the plaintiff himself in an honest manner set aside (*Addison and another v. Jaganpal RAI v. KAHAN CHAND.*
40 P L R 128=
A I R. 1938 Lah. 232.

C. P. CODE (1908), S. 151.

—Ss 151 and 152—Inherent jurisdiction—Exercise of—Another remedy open—Amendment of decree—Powers of—Decree of Subordinate Court merged in appellate decree.

A resort to inherent jurisdiction is not permissible where another remedy is open to the person preferring an application under S. 151. Thus where a remedy by

considerable delay in appealing is no bar to the District Judge entertaining an application to amend the decree of

this cannot be asked to be done as of right. The matter is one of discretion with the Court and the discretion has to be exercised after duly considering all the circumstances. **(J.) MITTER SEN-GANESHI LAL v**
A I R 1938 Lah 4.

—Inherent powers—Extent of—Power to order purchaser for loss of as the result of another

be interpreted as giving the general law they do not possess. A Court has no power under the section to give compensation to a decree-holder, who after purchasing property in execution in satisfaction of his decree loses part of that property as the result of another suit. **(Wort and Varma, JJ) PULCHAND RAM MARWARI v. NAURANGI LAL MARWARI**
16 Pat 729=10 R P 320=
172 I C 225=1937 P W N 836=
18 Pat L T 826=A I R 1937 Pat 647.

—S 151—Inherent powers—Payment of money in Court to party entitled—Money realised by execution sale of attached property—Application for payment by Crown towards arrears of income tax due by judgment-debtor—Powers and duty of Court to order payment—Separate suit by Crown—Necessity—Attaching creditor—If secured creditor—In omnibus Act, S. 46—If a bar to application for payment—Crown debt—Priority. The Crown has priority over unsecured creditors in the

account of income tax assessed on and due by the judgment debtor. It is not necessary for the Crown to file a suit for the amount due, when the debt is not disputed and is indisputable. The right to payment being in dispute requires that it should be paid to the formal application for payment has been right and convenience demand that the exercise its inherent power. No special

not exhaustive and it cannot, without express words to that effect, take away from the Crown the right of enforcing payment by any other method open to it.

C. P. CODE (1908), S. 151.

Mockett, J.—The Court under such circumstances can rightly invoke its power under S. 151, C. P. Code, in

A. I. R. 1938 Mad 360 = (1938) 1 M. L. J. 351 (F. B.).

—S 151—Inherent power—Power to go behind order of predecessor.

Where a presiding order, his successor that order and hold *ul-Hassan and Hamilton, J.J.*) SRI KRISHNAN v JAMNA NARAIN 173 I C 980 = 1938 D W N 348 =

10 R O 218 = 1938 O L R 154 = 1938 O A 240 = 1938 D W N 348 = A. I. R. 1938 C

—S 151—Inherent powers—Power to set aside an order made by it when it notice that the order is one which is null and void or illegal order—If limited to cases of deception practised on Court

A Court has always got an inherent power to set aside an order made by it when it notice that the order is one which is null and void or illegal order. Its power to vacate such an order is not limited to cases of fraud or deception practised upon the Court. (*Davis, J. C. and Lobo, J.*) DHOLANDAS GIDUMAL v SADHUMAL DOLUMAL. 328 L R 215

—S 151—Inherent powers—Recalling of invalid orders

A Court has inherent jurisdiction its invalid orders. (*Iqbal Ahmad*) CHANPA DEVI v ASA (DEV) I L R 172 I C 956 = 10 R A. 441 = 1937 R D 577 = 1938 A L R 53 = 1937 A W R 933 = 1937 A L J. 945 = A. I. R. 1938 All 8

—S. 151—Inherent power—Recalling of orders passed by Court—Order passed within jurisdiction and not illegal—Facts rendering order invalid or irregular not brought to notice of Court—Effect—Power to

Court confirmed the sale without probably noticing S. 26-M of the Act. On 24th September, 1936, the

C. P. CODE (1908), S. 151.

Held, in revision, (1) that the order setting the sale passed on 23rd April, 1937, was one which it had jurisdiction to pass though the Court may have taken an view of the law, or not followed the correct in having proceeded *ex parte*; (2) that the ing within jurisdiction, the Court could not and the remedy of the respondent, if aggrieved, was by way of appeal or revision and not by applying under S. 151, C. P. Code; (3) that there having been no deposit of fees in 1935, the Court was perfectly legal in the enactment of S. 26-M of the Bihar Tenancy Amendment Act, which was not brought to the notice of the Court, (4) that the non-compliance with S. 174, *et seq.*, non deposit of fees in

Court—Other remedy open—If bar to restitution under inherent powers—Property wrongly taken away in execution against another under erroneous order—Duty to make restitution on establishment of title.

Where property has been taken away from a third

so taken, the Court must use its inherent powers to re-stitute to such innocent party his property of which he has been deprived by the erroneous order of the Court. The fact that a suit is maintainable at the instance of that party is no ground for refusing redress under S. 151 when the wrong has been done under the order of the Court. (*Khwa Mohammad Noor, J.*) RAMESHWAR LAL JHUNJHUNWALA v MST. SUBDI. 19 Pat. L. T. 119 = A. I. R. 1938 Pat. 468.

—S 151—Inherent powers—Restitution—Powers Court—Execution sale—Property subsequently held by third person's in separate suit—Restitution to purchaser of purchase money. See C. P. CODE, S. 144 and 151. 19 Pat. L. T. 111.

—S 151—Inherent powers—Restoration of case dismissed for default—Grounds. See C. P. CODE, O. 9, 9. 40 Bom L R 238.

—S 151—Inherent powers—Security for costs—Application to High Court—Security for costs—Order for—Power to make—Civl Procedure Code, O 25 R. 1 and O. 41, R 10.

C. P. CODE (1908), S. 151.

a party, the Court would certainly hesitate before exercising its inherent jurisdiction under S. 151. (*Ranguskar, J.*) **HIRALAL KAMSUKH**
I L R. (1938) Bom. 743

—S. 151—Order under—
 passed on appeal—Revision.

As there is no specific provision Procedure for an appeal against S. 151, no appeal lies from such the order of an appellate Court such order is passed without it such an order has been passed without jurisdiction a

When there are specific provisions in the Code for the remedy which a party seeks, it is not open to him, after his failure to adopt those remedies, within the period allowed by law, to appeal to the inherent powers of the Court to obtain that remedy. Hence where a party has

A. I. R. 1938 Rang. 433

—S. 151—Other remedy open—Execution struck off in full satisfaction—Aggrieved party not appealing—If can later on apply under S. 151.

Where certain orders were passed on an execution application and it was finally struck off in full satisfaction, the orders passed were under S. 47, C. P. Code and hence appealable. If the party aggrieved by those

1938 A. W. R. (H. C.) 733—1938 A. L. J. 1041.

—S. 151—Powers of High Court under—Stay of connected suits.

The High Court has no power to stay the execution of a decree under S. 151.

—S. 151—Powers under—Orders in contravention of S. 7 (1) (a) of U. P. Encumbered Estates Act—If can be set aside.

Where a delivery of possession has been made in contravention of S. 7 (1) (a) of the U. P. Encumbered Estates Act, though an application for restitution may not come under S. 144, yet it can be set aside under S. 151, C. P. Code. (*Zia-ul Hasan and Yorke*).

A. I. R. 1938 Oudh 221

—S. 151—Restitution—Order holding surety liable for payment—Reversal—Application by surety for restitution—Inherent power of Court.

A surety who is a party to an order holding him liable for payment to the decree holder can, on reversal of that

C. P. CODE (1908), S. 152.

—S. 151—Review—Order due to inadvertence—Power of Court.

Where an order is passed under S. 151, the Court has no power to review it.

the amount.

Held that the Court had no power to review the order.

—S. 151—Scope—Administration suit—Decree—Power of Court to pass appropriate order. See C. P. CODE, O. 20, R. 13. 1938 M. W. N. 1127.

—Ss. 151 and 152—Scope and applicability.

Ss. 151 and 152, C. P. Code, cannot apply to a case where there is no accidental slip or error or omission on the part of the Court or there is no accidental slip, error or omission or slip in the plaint which intended one thing and owing to an accidental slip stated another, but the parties were labouring under a mistake at the time of the decree and the mistake was embodied in the decree. (*Dalip Singh, J.*) **ABDUL SATTAR v. FAZAL UL-KAHMAN.** 40 P. L. R. 100—

A. I. R. 1938 Lah. 331

—Ss. 151 and 154—Scope—Power to vacate prior order made by Court—Interests of justice.

It is perfectly competent to a Court to vacate its own order made by Court—Interests of justice. Ss. 151 and 154, C. P. Code, apply where his being done Where in the interests of made by it, it can do

so, and such an order vacating a prior wrong order cannot be said to be improper or without jurisdiction. (*Maclean and Sen, JJ.*) **HASAN v. ISAP**

40 Bom. L. R. 1180.

1—Scope of—Powers under, when to be used. U. P. ENCUMBERED ESTATES ACT, 1938 E. D. 385

—Stay of suit—Court in United Provinces

—If can issue stay order to a Court in another province

A Court in the United Provinces is not competent under S. 151, C. P. Code, to issue a stay order to a Court in another province. (*Collister and Barpas, JJ.*)

DARBAR PATIALA v. NARAIN DAS GULAB SINGH

I. L. R. (1938) All. 660 = 176 I. M. 625 = 11 R. A. 139 =

1938 A. L. J. 481 = 1938 A. L. J. 481 =

1938 A. L. J. 434.

—Subordinate decree. See C. P.

A. I. R. 1938 Lah. 4

—S. 152—Applicability and scope—Correction of accidental slip in decree—Effect of—Review—Distinction—Order correcting mistake in decree but passed on review application—If falls under S. 152 or O. 47—Original decree—If superseded. See APPEAL—COM-PETENCY

1938 M. W. N. 250

—Ss. 152 and 115—Decree substantially amended

amendment

laid down

at once

there

C. P. CODE (1908), S. 152.

appeal. It cannot therefore be revised. But in the

—S. 152—Scope of power under—Alteration of decree on the strength of accounts filed—If justified.

Court had no jurisdiction to receive fresh documentary evidence. The procedure is not justified by the powers of the Court under S. 152, C. P. Code. (*Mulla, J.*) **BALCHAND V. NARAIN DASS.** 1938 A W R (H C) 773 = 1938 A L J. 1080

—O. 1, E. 3—Joinder of defendants—Suit for damages for breach of contract against one defendant and for damages in tort against another.

A decree for damages for breach of contract against one defendant and a decree for damages in tort against another defendant in respect of damages arising out of the same transaction can be passed in the same action.

—O. 1, B 3—Joinder of several defendants—Con-

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—Different

ments—*Tri*

O. 2, R. 6—

O 1, R.

sion for wh

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defendants

be done, th

out of the same 'act or transaction'

transactions'. In order to qual

case must be one in which the

fact or an issue of law or both

defendants is substantially the same. Where a plaintiff

sued as an owner for possession of property, different

defendants or sets of defendants who were in possession

of the same property

does not apply to cases of misjoinder of causes of action

but to cases where several causes of action have been

properly joined in one suit and the causes of action so

joined cannot conveniently be tried together. (*Braund,*

J.) **DAW HLA GYI V. MAUNG PO THAUNG.**

1938 Rang. L. R. 307 = A. I. R. 1938 Rang. 420

—O. 1 R 3 and 5—Misjoinder of defendants

and causes of action—Every defendant is to be interest

ed in all reliefs—Suit by son against father and

alliance to declare debts not binding.

Where the sons of a Hindu father sued him and his

creditors and allies for a declaration that the father's

debts are immoral debts and hence not binding on them,

C. P. CODE (1908), O. 1, R. 10.

the suit is not bad for misjoinder of defendants and of action, for the several alienations made by father constitute 'series of acts or transactions' they are the same series of acts or transactions as alleged by the plaintiffs, they were all vitiated by one circumstance, namely, that they were incurred for immoral purposes. This feature put all

PURUSHOTTAM V. BHAGWAN SAO.

1938 N. L. J. 210 = 178 I. C. 215 =

A. I. R. 1938 Nag. 461

—O. 1, R. 3—Necessary party—Test for determination of.

The allegations in the plaint alone should have been looked into in order to come to a finding whether a certain defendant is or is not a necessary party (*Abdur Rahman, J.*) **DEVENDRA AYYAR V. MUTHU CHEITIAR.** 178 I. C. 191 = 47 L. W. 760 =

1938 M. W. N. 76 = A. I. R. 1938 Mad. 329.

—O. 1 R 8—Applicability—Suit against several

quite clear that the procedure pertaining to representa-

granted a decree for a consolidated sum as representing the mesne profits.

Held, that though on the facts found the plaintiffs were entitled to have recourse to O. 1, R. 8, C. P.

interest as I was wrong attempt had what had be payable and *Abdur* PRINCE OF

1938 M. W. N. 740 = 48 L. W. 109 =

A. I. R. 1938 Mad. 755 = (1938) 2 M. L. J. 148.

—O. 1, R. 10—Scope of—Grounds for permitting amendment—Suit on behalf of a Government Ward—Plaintiff's name wrongly given—Amendment, if can be allowed—C. P. Court of Wards Act (1889), St. 30 and 27.

O. 1, R. 10, C. P. Code, on a plain reading only contemplates that a suit should have been filed in the name of a wrong person irrespective of whether he is a living or a dead person. Such a defect is capable of being cured, if the mistake is shown to have occurred in good faith and provided that in permitting the amendment no

C. P. CODE (1908), O. 1, R. 10.

injustice results to the defendant. In a suit on behalf of a government Ward under S. 30 of the C P Court of Wards Act, the real plaintiff is the manager and he sues on behalf of the Ward. Any mistake in the name of the Ward does not affect the substance of the suit and its correction cannot prejudice the defendant. (*Niyogi, J.*) **KARIMULLAH KHAN v. BHANU PRATAP SINGH.** 175 I.C. 911 = 11 R.N. 14 = A.I.R. 1938 Nag. 458.

— **O. 1, R. 10—Scope—Striking out name of necessary party—Property—Proper procedure.**

When O. 1, R. 10, C.P. Code, provides that the Court may strike out the name of a party who has been im-

C. P. CODE (1908), O. 2, R. 2.

covenant. The dismissal of a suit by the vendee on the ground of dispossession by the purchaser at a sale in execution of a decree on an undisclosed prior mortgage—the dispossession being found to be false—is no bar under O. 2, R. 2, C.P. Code to a second suit on a separate cause of action, namely, that the vendee, at a time anterior to the date of the alleged dispossession, was compelled to pay off the claim under the undisclosed mortgage. (*Hornall, J.*) **ARUMUGHAM CHETTIAR v. MARIAPPAN CHETTIAR.** 1937 M.W.N. 1256 = 176 I.C. 809 = 11 R.M. 178 = A.I.R. 1938 Mad. 255 = (1938) 1 M.L.J. 184.

— **O. 2, R. 2—Gift of certain property to wife in**

owners of the equity of redemption sue for redemption of the mortgage, the Court cannot strike out the names of some of them under O. 1, R. 10, C.P. Code, on the ground that they had not been properly joined as parties to the suit. The correct procedure would be to keep the names of all the plaintiffs on the record until a

session—Decree—Subsequent suit for future mesne profits—If maintainable.

Where a mortgagee who is entitled to sue both for mesne profits and possession sues only for mesne profits and does not sue for possession and obtains a decree, he cannot subsequently sue for possession. And when his

— **O. 1, R. 10 (2)—Grounds for adding party**

Under O. 1, R. 10 (2) it is not necessary that there should be an application from the parties, the rule,

— **O. 2, R. 2—Omission of claim—Absence of leave**

Effect.

Where a person failed to include in his suit the whole

HIRA LAL ROY CHOWDHURY v. ANNAPURNA.
1938 A.L.J. (Supp.) 9 = 1938 A.W.R. (B.R.) 97 = 1938 R.D. 188.

— **O. 1, R. 10 (2) and S. 107—Power of Court—Addition of party is respondent in the appeal**

The Court has ample power under the provisions of O. 1, R. 10 (2) read with S. 107 C.P. Code, to implead any person in the appeal as a respondent who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court to adjudicate upon all the questions involved in the appeal effectively. (*Abdur Rahman, J.*) **DEVENDRA AYYAR v. MUTHU CHETTIAR.** 178 I.C. 191 = 47 L.W. 760 = 1938 M.W.H. 75 = A.I.R. 1938 Mad. 329.

— **O. 2, R. 2—Applicability—Contract of sale by instalments—Defaults—Separate suits in respect of each default—It barred. See SALE OF GOODS ACT, S. 39 (2).** A.I.R. 1938 Rang. 364.

— **O. 2, R. 2—Applicability—Sale deed—Covenant as to land being free from encumbrances—Undisclosed mortgage—Decree and sale—Suit on ground of dispossession by purchaser at sale—Dismissal as disposition found to be false—Second suit on ground of plaintiff having been compelled to pay claims of prior mortgage—If barred.**

Although a sale deed contains a single covenant to the effect that the land sold is free from encumbrances, there may be two distinct causes of action giving rise to different suits, arising out of the breach of the same

suit for those reliefs is barred by the provisions of O. 2, R. 2, C.P. Code. (*Mosely, J.*) **A. S. CHETTIAR FIRM v. P. R. S. MEERA PILLAI.** 178 I.C. 167 = A.I.R. 1938 Rang. 290.

— **O. 2, R. 2 and O. 23, R. 1—Scope—Suit on mortgage—Agreement between plaintiff and sub-mortgagee to omit properties sub-mortgaged from suit and to file fresh suit in that behalf within time fixed—Court omitting properties and fixing time—No express application or order under O. 23—Effect—Fresh suit in time if barred.**

In a suit in the Bombay High Court for sale on a mortgage, the plaintiff and his sub-mortgagee who was impleaded as a party to the suit, agreed to omit from that suit their claim to certain lands in the suit, which were in Madras and to bring a suit for the same within three months in Madras. An interim decree was passed by consent as between the two parties. The period was extended later by another fifteen days and it was ordered that if such a suit was not filed within the said fifteen days the parties should be barred from filing such a suit. There was, however, no express written application to withdraw the claim, nor any express order allowing withdrawal or granting permission to file a fresh suit. A fresh suit was filed by the sub-mortgagee within the time fixed in Madras in the proper Court. It was contended that the suit was barred under O. 2, R. 2 and O. 23, R. 1.

Held, that the suit was not barred either under O. 2, R. 2 or O. 23, R. 1, C.P. Code and it must be held that

C. P. CODE (1908), O. 2, R. 2.

the Bombay Court acted under O. 23, C. P. Code, and gave permission to the institution of a fresh suit and that the order was duly complied with. (*Madhavan*).

cluded in claim—*Distrain proceedings for Kharif proving infructuous—Subsequent suit for Kharif rent—If barred.*

A landholder sued his tenant under S. 132 of the Agra Tenancy Act for the recovery of *rabai* rent of a certain *faisl*, but did not sue for the *Kharif* rent of that *faisl*, though that was also due; as the landholder was not by distrain, he plaint. The and the plain—the *Kharif* rent

of that *faisl*.

Held, that the suit was barred by O. 2, R. 2, C. P. Code (*Darling, S.M. and Bomford, J.M.*) KISHAN LAL v. SHRI RAM. 1937 A W R. 867 = 1937 E D 394

—O. 2, R. 2—*Specific performance of contract of sale—Suit for separate suit for possession—If barred.*

In a suit for specific performance of a contract of sale the cause of action that first arises is one for performance of that contract by execution of a registered deed

since has been passed and is then a new and distinct cause of action arising from the same facts. (*A. S. CHETTY*).

—O. 2, R. for—*Grant of*

Under O. 2,

for a particular

maintainability

have been ask-

subsequent pro-

ving that the ap-

or at least be

first suit. It cannot be said that the Court has no

power to grant leave unless the application is made

before the institution of the suit.

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dant.

by the Court during the pendency of the suit as before its institution. The legislature did not wish to insist upon leave being obtained before the first hearing. (*Varadachariar, J.*) VENKAYYA v. VENKATA RAO.

1938 M.W.N. 925 = 48 L.W. 517 =

A.I.R. 1938 Mad 979 = (1938) 2 M.L.J. 642

—O. 2, R. 2 (3)—*Splitting of claim—Right of plaintiff.*

Pet *Baguley, J.*—There is no provision of law by which a plaintiff can reserve the right to split his claim arising out of the same cause of action. He may ask the Court to allow him to do so under O. 2, R. 2 (3) C. P. Code, but the Code gives no unilateral right to

C. P. CODE (1908), O. 5, R. 20.

reserve a claim of this sort. (*Baguley and Sharpe, J.J.*) MA MA NYUN v. MAUNG MYA.

1937 Rang. L.R. 447 = 174 I.C. 794 = 10 R.E. 428 =

A.I.R. 1938 Rang 76

Acability—Misjoinder of causes

DE. O. 1, R. 3—*JOINDER OF*

1938 Rang L.R. 397.

4—*Pleader not appointed in*

application for restoration of

suit.

A pleader who puts in an application on behalf of a litigant acts for him and cannot, therefore, do so unless he is authorized in writing by him. Consequently an application for restoration of a suit dismissed for default cannot be made by a pleader whose appointment has not been made in writing. (*Addison and Din Mohamed, J.J.*) BASHIR AHMAD v. MARY NINCK.

L.R. (1938) Lah. 417 = 40 P.L.E. 235 =

A.I.R. 1938 Lah 698.

—O. 3, R. 4—*Vakalat filed in suit—How long*

remains in force—Collector's case—Fresh vakalat—

Necessity.

Collector's cases are regulated by rules framed under S. 70, C. P. Code. Being part of execution proceedings they are part of proceedings in suit. As a vakalatnama filed by a pleader in the suit remains in force throughout the proceedings in the suit and as a fresh vakalatnama is not necessary for his appearance in execution proceedings, so also in Collector's cases which are only part of those proceedings in the suit, a fresh vakalatnama is not necessary for the pleader's appearance (*G. P. Burton*).

THE CO-OPERATIVE SOCIETY v. RAM-

DRA BHAGWATT 1938 N.L.J. 122.

—O. 3, R. 4 (3) and O. 8, R. 8—*Interpretation of*

(3) of R. 4 of O. 3—*Application for restoration*

of suit dismissed for default—Fresh appointment of

pleader.

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—O. 5, R. 17—*Summons—Service by affixure*

when justified—Reasonable diligence to find out party—

to return—Affixure

copy of the summons to

house, can come into

operation.

the defendant had gone out on business and would be

back in the evening and he thereupon affixed the

summons to the door of the house, it cannot be said that

the summons has been duly served, for it could not be

said that reasonable diligence had been used to find out

the defendant. (*Mulla, J.*) SALIG RAM v. JUNA

SAHAL. 1938 A.W.R. (H.C.) 750 =

1938 A.L.J. 1166.

—O. 5, R. 20—*Substituted service—When could be*

ordered—Conditional order to serving officer—Legality.

Where in an order for fresh summons a Court remark-

ed that if the defendant evaded service or could not be

found after due care and diligence substituted service

C. P. CODE (1908), O. 6, R. 4.

would be effected, it was held that such a conditional order was illegal, as it was for the Court and not for the serving officer to determine whether there was evasion of service. O. 5, R. 20 allows substituted service only when the Court is satisfied that defendant is evading service. (*Weston, J.C.S.*) GOVIND RAM v. NIRANJAN LAL. 1938 A M L J. 43

—O. 6, R. 4—Pleadings—Deed impugned—'fraudulent' and 'bogus'—Necessity to keep distinct.

To call a deed both 'fraudulent' and 'bogus' is clear piece of pleading. Though fraud may be in both cases, a deed may be fraudulent without bogus and hence it is better to keep the two (Gruer and Nayagi JJ.) GODBOLE v. MST. NANIBAI. 1938 N L J. 279 = A I R. 1938 Nag 546.

—O. 6, R. 10—Plea of insanity—Pleadings—Contents—Duty of final Court of fact.

Though it may be that a party seeking effect of a deed by pleading insanity at the caution of the deed is not bound to plead from which he was bound or established though it is permissible for him to lead evidence in proof of general insanity from which an inference of unfit mental condition at the time of the deed could be drawn.

for the final appellate Co
insanity from the statement
the pleading. (*Puranik, J*
FATMABI

A I R. 1938 Nag 204

—O. 6, R. 17—Amendment—If in the complete discretion of Court—When obligatory—Promote forming part of the cause of action found—Amendment to permit falling back upon debt—If can be allowed.

Though, O. 6, R. 17, C. P. Code, l. words 'the Court may', the latter portion, if the amendment is permissible under the words 'the Court may', the latter portion, if the Judge has no discretion but to allow it, if it is necessary for determining the real question in controversy between the parties. Where a suit was for monies due on a mortgage as evidenced by a promote and a deposit of title deeds, but the promote was found to be inadmissible in evidence, the plaintiff could be permitted to amend his plaint, so as to base his cause of action on the original debt for which the defective promote was given. There could be no prejudice to the other party such as would not be compensated by costs, and the suit would still remain after the amendment, a suit to recover money on a mortgage created by deposit of title deeds. (*Baguley and Mosty, JJ.*) NINEVEY v. E. N. 1938 Rang L R. 521 = A I R. 1938 Rang. 461

—O. 6, R. 17—Amendment of plaint—Considerations—Legal relationship and nature of suit—Alteration of—If permissible

An amendment of the plaint should not be allowed when plaintiff seeks to amend in order to sue on an entirely different legal relationship between himself and the defendant from that relied upon in the original plaint, and when the entire nature of the suit is sought to be changed. (*Weston*) NIHAL CHAND v. AMAR CHAND. 1937 A M L J. 104

—O. 6, R. 17—Amendment of plaint—Introduction of fresh details—Permissibility.

C. P. CODE (1908), O. 6, R. 17.

It is not by a mere change in the wording of the plaint or the introduction of fresh details that the nature of a suit is altered. The alteration which affects the case is one where the original suit is wholly displaced by the proposed amendment or where a totally different or inconsistent case is introduced. But where this is not the case, leave to amend cannot be refused merely on the ground that the amendment is not strictly in accordance with the original plaint.

tion of opposite party.

A firm brought a suit against another firm working in the Patiala State. The description of the opposite party was given as "firm S situate at Patiala State".

name of C, the sole proprietor and manager of the firm in place of firm S.

Held that in view of the fact that the name of C was

A I R. 1938 Lab. 718.

nt of plaint—Revision.

DECIDED

1937 A M L J. 104

—O. 6, R. 17—Amendment of plaint—When to be disallowed—New case—Late stage.

It is wrong for a Court considering amendment to regard the nature of the case as a whole and to refuse to allow amendment on the ground that it is a new case.

refused as being not only out of time, but made at a very late stage. It is an amendment that introduces a new case, a new cause of action, a new contract, a contract made at a different time having

A I R. 1938 Nag 389.

—O. 6, R. 17—Amendment in second appeal—Permissibility—Suit for bare declaration—Plea of non-maintainability raised in trial Court—Application for amendment in second appeal—Competency *Sec* SPECIFIC RELIEF ACT, S. 42.

1938 M W N 274 = A I R. 1938 Mad 331.

—O. 6, R. 17—Appeal—Decree against two defendants—Appeal by one only—Appeal in form against whole decree—Court paid only as regards part—Application to amend valuation and to pay additional court-fee—Duty of Court.

Where an appeal by one defendant only from a decree against two is objected to on the ground that the valuation of the appeal is restricted to that part only which relates to the appellant, if the appellant offers to amend the valuation and pay the difference of court fee, the same must be accepted by the Court, especially when the appeal is in form against the whole decree. (C)

C. P. CODE (1908), O. 6, R. 17.

Terrell, C. J. and James, J. SARAT CHANDRA PATNAIK v. BAIDYANATH. 1938 P.W.N. 523

—O. 6, R. 17—*Applicability*—Party deliberately omitting to join necessary party to application and concealing existence—Subsequent application to amend—If can be allowed.

Where an applicant under S. 4 of the U. P. Encumbered Estates Act does not join in his application all the necessary parties as required by law, and asserts that there are no other parties to be added, wilfully concealing the existence of some persons who ought to be joined, an application to amend under the provisions of O. 6, R. 17 cannot be given to such a party. (*Darling, S. M. and Bomford, J. M.*) HAR PRASAD v. PARNESHWARI DAS. 1938 R.D. 137 = 1938 A.W. 44 (P.R.)

for
mortgage
debility

Where a person brings a suit for recovery of possession of land but it is found that in fact his claim is for redemption of an unprovable usufructuary mortgage, such person cannot be allowed an amendment of the pleadings by basing his suit on his title, the causes of action for the two suits being different. (*Baguley, J.*) U NAING v. KO SEIN. 176 I.C. 631 = 11 R.E. 64 = A.I.R. 1938 Rang 125

—O. 6, R. 17—*Discretion*—Amendment, at late stage to avoid payment of court fee—If can be allowed.

No party has an absolute right to abandon any portion of his claim at any stage. It is always in the discretion of the Court whether to allow an amendment of the plaint or memorandum of appeal or refuse it. Where a party has obtained an adjudication of his claim

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—O. 6,

allowed

mortgage suit the mortgagor makes no claim to money decree, allows time to go by and makes no application for leave to amend till his claim is barred by limitation,

C. P. CODE (1908), O. 6, R. 17.

but subsequently applies for leave to amend, although there is still a discretion in the Court to allow amendment.

—O. 6, R. 17—*Discretion of trial Court*—Interference.

The trial Court has complete discretion whether to allow or refuse a prayer for an amendment of pleadings and where the discretion has not been exercised injudiciously or arbitrarily, the High Court will not interfere. (*Aldison and Din Mahomed, J.J.*) JAINI BROTHERS & CO. v. SHANKAR LAL. 178 I.C. 176 = A.I.R. 1938 Lah 270.

—O. 6, R. 17—*Late stage*—Delay in application—

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ts, and the

plaintiff applied to amend the plaint after considerable delay, so as to enable him to obtain an alternative relief for partition of the assets in case there was no dissolution of the partnership.

Held, that in the matter of rectifying defects in pleadings which do not affect any substantial rights, it is not consonant with justice to deny a remedy which otherwise would be lost by reason of carelessness or delay.

Held, further, that in the circumstances of the case the lower Court ought to have allowed the amendment of the plaint. (*Pandurang Row and Venkaramana Rao, J.J.*)

—O. 6, R. 17—*Powers of Court*—Amendment of plaint in appeal—Propriety.

An amendment of the plaint may be allowed even at the appellate stage. It is for the Court to consider

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Court was in accordance with the true facts that existed at the time the suit was filed by the defendant 2

SubRAMANIAN CHETTIAR. A.I.R. 1938 Mad. 265.

—O. 6, R. 17—*Scope*—If exhaustive—Application for leave to sue in forma pauperis—Property omitted

C. P. CODE (1908), O. 6, R. 17.

from schedule—Amendment to include—Power of Court to allow.

O. 6, R. 17, C. P. Code, is not exhaustive of the powers of the Court in the matter of amendments. The Court has therefore jurisdiction to allow an amendment for an item of claim omitted from the application or annexure thereto. Such an amendment cannot be held to be illegal or without jurisdiction on the ground that O. 6, C. P. Code, applies only to pleadings and not to applications to sue in forma pauperis. (*Dhastle and Varma, J.J.*)

BIHARI SAHU v. SUDAMA KUER. 175 L.C. 505=

10 R.P. 632=1938 M.W.N. 163=4 R.R. 598=

19 Pat.L.T. 101=A.I.R. 1938 Pat. 209

—O. 6, R. 17—Scope—Suit under O. 21, R. 103,

C. P. Code, for amendment of addition to plaint by defendant.

Plaintiff brought suit for possession of land.

Defendant appealed. In second appeal by the defendant, the plaintiff sought to amend the plaint.

The plaintiff sought to amend the plaint by adding a claim for possession of land.

The plaintiff sought to amend the plaint by adding a claim for possession of land.

Contract for sale of land—Refund of purchase money—Amendment of plaint—Permissibility.

Defendant amended his plaint in order to obtain the refund of the purchase money and should not be referred to a separate suit. (*Dalip Singh and Shamp, J.J.*) HAKAM ALI v. HASHU. A.I.R. 1938 Lah. 214.

—O. 7, R. 1—Particulars in plaint—Suit for breach of conditions in contract—Particulars as to the conditions and manner in which they had been violated—Necessity to give.

A defendant is entitled to know exactly what case he has to meet and he must have an opportunity to investigate the details of the claim, with a view to prepare the materials for his defence. Where the breach of certain conditions of an agreement forms the subject-matter of the plaintiff's complaint, the defendant is entitled to know, the conditions and the exact manner in which they have been violated. (*Bose, J.*) JAYSHED v. KUNJILAL. 1938 N.L.J. 392=

A.I.R. 1938 Nag. 530

—O. 7, R. 10—Applicability—If return of plaint for want of territory—See C. P. CODE, Ss 151 AND O. 7, R. 11.

A.I.R.

C. P. CODE (1908), O. 7, R. 11.

—O. 7, R. 10—Time for return of plaint—Order returning plaint at stage of arguments—Propriety.

A Court can return a plaint for presentation to the proper Court.

A.I.R. 1938 All. 76.

—O. 7, R. 11—Duty of Court—Appeal—Deficiency in court fee—Proper procedure—Dismissal without proper order directing appellant to pay deficient court fee.

If an appeal presented in time is insufficiently stamped, the Court may allow it to be stamped or for remedying the defect. If he fails to do so, the appeal is dismissed for such defect with the order of the Court. There is no limitation in such a case. The best course for the Court is to wait till the expiry of the time for presenting an appeal.

ne—Request for further time such time—Sufficiency—Satisfied—Date of original presentation of full court fee. See C. P. CODE, R. 11. 1938 M.W.N. 257

—O. 7, R. 11(c)—Dismissal under—When satisfied—Appeal insufficiently not stamped and presented in time—Duty of Court—Dismissal without order requiring payment of deficiency within fixed period—Legality.

Before a suit or an appeal can be rejected for insufficiency in court-fee under O. 7, R. 11(c), C. P. Code, the law requires that there shall be a definite order of the Court, fixing a day for payment of the deficiency and non-compliance with such order. The dismissal of the suit or appeal for non-payment of the necessary court-fee before the expiry of the period of limitation is not warranted. If the suit or appeal is filed in time, it is open to the Court to give time to the party for paying the necessary court-fee even in instalments. The fact that the counsel for the plaintiff or appellant promises to pay the deficiency within a period does not take the place of the order of the Court which is prescribed by law.

Code, should be for content of orders of the Court (*Darling, S.M.*)

C. P. CODE (1908), O. 9, R. 8.

—O. 9, R. 8—*Applicability*—*Plaintiff's counsel asking for adjournment—Adjournment being refused, reporting no further instructions.*

Where the plaintiff's Counsel confines himself to asking for an adjournment and, when it is refused, retires from the case and states that he has no further instructions, R. 8 of O. 9 applies and the plaintiff will not be held to be negligent. *Howe v. Wood* [1908] 1 All. 101.

case so as not to prejudice his client by appearing on matter.

Review application—Competency.

Where a suit is dismissed for default, the remedy of R. 9.

—O. 9, R. 9—Application in proved

In an application for restoration under O. 9, R. 9 the plaintiff must show some fact which was either not known to the Court when it dismissed the suit, or at least at that stage lacked satisfactory proof (*Panchridge, J.*) **BAIJNATH BOTHERA v. KEDARNATH I L R. (1938) 1 Cal 213=174 I O 657=10 R C 703—A I R. 1938 Cal 74**

—O. 9, R. 9—Application under—Pleader on record C P

for Duty

Slight negligence of party—If ground for refusing to restore—Discretion exercised on wrong basis—Interference on appeal—Inherent powers of Court, S 151

Per *Beaumont, C J* and *Rangnekar, J.*—In cases of discretion it is very undesirable to act on precedents, as every Judge has to deal with the cases which come up before him on the particular facts of each case. If a person whose case has been dismissed for non-appearance summarily, appears on the same day, and produces

generally to be given the right to have his case restored on payment of costs thrown away. It is, after all, a very serious matter to dismiss a man's suit or summons or whatever it may be without hearing it, and that course ought not to be adopted unless the Court is really satisfied that justice so requires. There is nearly always some degree of negligence or carelessness on the part of an applicant whose case has been dismissed for non-appearance, but that by itself would not disentitle him to have his case restored to the file. Where the negligence is exceedingly slight, the case ought to be restored, if he is not guilty of either conduct or gross negligence. If the Court exercises its discretion on a

O. P. CODE (1908), O. 9, R. 13.

wrong basis, the appellate Court will interfere and make the necessary orders.

Blackwell, J.—Whether the matter is to be dealt with as failing under O. 9, R. 9 or under S 151, C P. Code, and the inherent jurisdiction of the Court, it is in every case a matter for the discretion of Court. If the Court dealing with the matter cannot be said to have acted either consciously or in disregard of any legal case of its discretion, the appellate Court will not interfere, though it may come to a conclusion if it were to deal with the same matter.

Blackwell, J.—O. P. Code does not restore a case as shown by appearance and it is S 151, has to act *ex debito iustitiae* in order that real and substantial justice may be done. Rules of procedure are meant to secure

—O. 9, R. 9 (1)—Dismissal of suit for default—Plaintiff, if precluded from setting up his claims as defence to suit.

In a suit on a first mortgage, the third mortgagee who was impleaded as one of the defendants claimed priority over the second mortgagor under S 78 of the T. P. Act. A suit previously filed by the third mortgagee to obtain a declaration of his priority was dismissed for default.

—O. 9, R. 9 (1) and 8—Fresh suit—Bar of—Default in deposit and appearance on day fixed—Dismissal—Fresh suit with addition of new defendant—Maintainability

Where in a suit for ejectment the plaintiff was granted time to add a new defendant on condition that a sum was deposited on a certain date as damages, and where on his default in so depositing and failing to appear on the day fixed for the trial the plaintiff was dismissed for default, he was not entitled to file a fresh suit for ejectment on the same day with the addition of a new defendant. **2 (1), C P. Code** one under HNA JATAR R D 614—(B B) 522.

—O. 9, R. 13—Applicability—"Ex parte decree"—Defendant directed to file written statement but not filing—Effect—Defendant and pleader not prevented from addressing Court at hearing—Decree—If ex parte—Application to set aside—Maintainability.

Where a defendant is directed to file a written statement by a certain date but fails to do so, and his application for further time is rejected, the Court should direct the case to be heard in default of written statement. An order fixing the case for hearing *ex parte* is not justified. A defendant is not bound to put in a written statement; if he does not file it he is taken to admit the allegations in the plaintiff's plea.

C. P. CODE (1908), O. 17, R. 3.

(*Tek Chand, J.*) GANI

—O 17, R. 3—*At*

ship accounts—Prelimin

ing plaintiff to deposit commissioner's fees—Deposit not made—Dismissal of suit—Appeal—Appellate Court admitting appeal on condition of plaintiff making required deposit—Propriety of.

In a suit for taking partnership accounts a preliminary decree was passed and a commissioner was appointed for settling partnership accounts. The trial Court ordered the plaintiff to deposit a certain sum towards the commissioner's fees. The plaintiff did not make the deposit and obtained adjournment. On the adjourned date, the plaintiff was warned that if the deposit was not made within a week the suit was liable to be dismissed for want of prosecution. No deposit having been made within the time allowed, the Court dismissed the suit. On appeal against this order the appellate Court admitted the appeal on condition that the plaintiff deposited the required sum.

Held, (1) that the order of the appellate Court in so far as it interfered with the discretion exercised by the trial Court

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be restored to file on the deposit being made, and proceeded with (*Mekia and Lobo, JJ*) MENGHOMAL v. VARUMAL, 176 I.C. 503 = 11 R.S. 20 = A.I.R. 1938 Sind 142

—O 17, R. 3—Order of dismissal under—Remedy—Appeal or review. See C. P. CODE, O. 47, R. 1. 1938 R.D. 181 = 1938 A.W.R. (B.R.) 115.

—O 18, R. 13—

If mandatory

It is not enough the evidence in his judgment should make a separate finding by each witness. (*J.*) DASSA RAM v. 2.

177 I.C. 157 = 11 R. Pesh = A.I.R. 1938 F

—O 18, R. 18—*Local inspection—Object of procedure—Judge making inquiry of people present at inspection and basing decision thereon—Propriety of—Finding of fact—Finality in second appeal.*

It is a quite unobjectionable procedure for a Judge to make a local inspection, in fact O. 18, R. 18, C.P. Code, expressly provides for it. But it is not a justifiable procedure for a Judge at such local inspection to welcome the presence of crowds of anonymous villagers and in Judge in formal inquiries amongst the people in those crowds for the purpose of obtaining guidance in deciding the rights of the parties. If a Judge does so and treats the case,

warrant for the procedure whereby the himself into an unofficial investigator and inquires of all and sundry regarding their views on the rights of the parties with the object of founding a judgment on what he has heard. No finding of fact based on such materials and achieved by such procedure can be supported or be

C. P. CODE (1908), O. 20 R. 11.

—O 18, R. 18—*Observations of Judge made as result of local inspection—Value of.*

Observations by a Judge in the course of his local inspection cannot be substituted for the evidence of witnesses examined on the subject. It is obvious that in the case of a Judge's observations, the parties never get a chance of either cross examining him on the various points raised or setting right his views if they are found to be erroneous. (*Varma, J.*) HARI PRASAD SINGH v. ROPNA KHARIA, 175 I.C. 698 = 4 R.R. 625 = 11 R.P. = A.I.R. 1938 Pat. 288.

—O 20—*Scope of—Extension of principle underlying—Rules to be observed. See TORT—DAMAGES.*

1938 A.L.J. 571.

—O 20, R. 1—*Judgment delivered without notice to parties—Counsel for party informed subsequently—Limitation for appeal—Starting point.*

Where a Court delivers a judgment without having the judgment, date, the judge, the day, this r pronouncing, peal must be on the date on A.I.R. 1925 MOHAMMAD

—O 20, R. AND 149 AND O.

—O 20, R.

Causes—Contents—Duty of Judge

Under O. 20, R. 4 (1), C. P. Code, the judgment of a Court of Small Causes must contain the point for deter-

1938 O.W.N. 805 = A.I.R. 1938 Oudh 225.

—O 20, R. 4 (2)—*Judgment—Contents. See C. P. CODE, O. 41, R. 31 AND O. 20, R. 4 (2).*

A.I.R. 1938 Pat. 89

—O 20, R. 6—*Scope and effect of. See C. P. CODE (1908), SS. 148 AND 149 AND O. 20, R.R. 3 AND 6.* 1938 A.L.J. 673.

—O 20, R. 11—*Power of Court under—If affected by U. P. Agriculturists' Relief Act.*

Under the Agriculturists' Relief Act it is imperative on the Court to pass an instalment decree in certain cir-

1937 A.L.J. 1217 = A.I.R. 1938 All. 52.

—O 20, R. 11 (2)—*Order under—Application time barred—Legality—Limitation—Matter of procedure.*

An order passed under O. 21, R. 11 (2) postponing the date of payment of the decretal amount on terms, on

C. P. CODE (1908), O 20, R. 12.

an application filed after six months of the date of the decree, is not an order passed without jurisdiction Limitation is a matter of procedure and an order passed on a time barred application is not one without jurisdiction. (H'v'ston.) SOHAN RAJ v. KESHA.

1938 A M L J. 86

made in execution as to the amount of mesne profits from the institution of the suit till delivery of

then be the duty of that Court to pass a final decree in conformity with the provisions of O. 20, R. 12 (2), C. P. Code.

Per *Derbyshire, C. J. Mukherjee, J. (contra)*.—There is nothing improper or wrong in law in the suit Court directing that such an inquiry shall be made by the executing Court, and there is much to be said in favour of it from the point of view of *shire, C. J. and Mukherjee, J.*

THE PORT OF CALCUTTA v. FR

67 C L J. 473—42 G.W.N. 748.

—O 20, R. 12—Mesne profits—Calculation of—Deduction of collection charges.

Even where the dispossession is wanton and malicious in calculating the amount of mesne profits the collection

68 C L J 152—A I R 1938 Cal 563

—O. 20, R. 12—Mesne profits—Interest—Mode of calculation.

When profits are earned or might by the wrongdoer yearly, interest on be calculated yearly and year by year. *Biswas, J J*) RAJENDRA NARAYAN BENDRA NARAYAN RAY

68 H L J 152—A I R 1938 Cal 563

—O 20, R. 12—Partition suit—Preliminary decree passed on compromise—No provision for mesne profits—Power of Court to direct enquiry into mesne profits

It cannot be denied that a decree can be varied by consent of parties. Although the preliminary decree passed on a compromise in a partition suit makes no provision for payment or ascertainment of any mesne profits, the Court would be justified in appointing a

ul-Hasan and Ham Ham, J J) SRI KRISHN

C. P. CODE (1908), O 20, R. 13.

JAMNA NARAIN. 173 I C 980—10 R E 248—1938 O L R 154—1938 O A. 240—1938 O.W.N 348—A I R 1938 Oudh 103

—O. 20, R. 12—Preliminary decrees granting mesne profits before suit—Exact date from which they were to be assessed not specified—Right of plaintiff to

ascertainment of mesne profits.

The correct procedure under O. 20 R. 12, C. P. Code, is for the Court to direct an inquiry as to the mesne profits, and then pass a final decree for the amount found due on inquiry. The Court which is directed to make the inquiry in execution ought merely to determine its recovery. It decree for recovery *C. J.) BALARAM*

176 I C. 254—11 R B 33—40 Bom L R 418—A I R 1938 Bom. 320.

—O 20, R. 12—Scope—Award of mesne profits without inquiry being directed—Award at time of decree itself—If in contravention of rule—Executability of such decree without fresh final decree.

profits—Award of mesne profits by final decree—Prima facie.

The C. P. Code has not expressly laid down any pro-

—O 20, R. 12—Administration suit—Decree—Consequences of—Power of Court to pass order staying or restraining execution by creditor of his decree—C. P. Code, S 151 and O. 39 R 1 and 2—Application of.

Though an administration suit is filed only by one creditor, the decree passed in the suit is in favour of all the creditors of the deceased debtor. No one should be allowed to have an advantage over another with respect to the enforcement of his claim against the estate of the deceased. The Court passing the administration decree has jurisdiction to pass appropriate orders to prevent the execution of his decree by any particular administrator. It can pass orders to administer the entire estate of the deceased—all of whom could be considered as its creditors. It can pass orders staying execution by a creditor of his decree, or

■ P. CODE (1908), O. 20, E. 17.

order, in the nature of injunction restraining him from executing his decree. Such orders are consequential orders and have to be passed to give full effect to the decree in the suit. It is unnecessary to invoke S. 151 or O. 39, Rr. 1 and 2, C. P. Code, for the purpose of passing such orders. An applicant for such order need only invoke the decree in the suit in their aid. (*Madhavani Nur. f*) NICHOLSON TOWN BANK, LTD., TANJORE v.

—O. 20, R. :
to 120 of the
Validity of latter ru
OF PRACTICE, RR. 114 TO 120.

(1938) 1 M.L.J. 495 (F.B.).

—§ 21, R 1—Applicability—Compromise of claim proceedings—Agreement to receive in instalments—In default of payment on due dates, whole amount to be paid—Lisant on due date, a holiday—Tender into Court next day—Right to apply for full amount, if arises.

The agreement between parties was that the amount due should be paid in instalments, and if there was any default in such payment, the whole of the amount is to become payable. In such a case where the due date fell on a holiday and the instalment was not paid, it could not be deposited in Court on the next working day relying upon O 21, R 1, C. P. Code, for where two alternatives are provided one cannot be chosen in such a manner as to prejudice the rights of the other party. One could not commit a default and the time in derogation of the term set parties. In such a case the entire payable (*Bennet, Ag. C.J. and G. A. v. ...*)

ROSHAN LAL v GANPAT LAL, I.L.B.(1938) All. 337 = 174 I.C. 986 - 10 R.A. 641 = 1938 A.L.R. 365 - 1938 A.L.J. 121 = 1938 A.W.R.(H.C.) 89 =

—O 21, R. 2—Adjustment
which judgment-debtor makes as
creditor in partial adjustment,
agrees to pay balance in instalments—Compromise, of
adjustment.

Where a compromise states that certain decrees or had been justment of d by means an adjust- do

amount to sub-stitution of a new decree for
decree. (*Abdul Rashid, J*) DARU MAL v. TODA
40 P L R 264-A I R 1938 La¹

—O 21 B 2—Adjustment—Contract that judge

the judgment-debtor and acceptance thereof by the decree holder is a legal adjustment of the decree. Thus if *A* holds a decree against *B* and *B* offers to transfer certain property to *A*, and *A* accepts that promise to transfer in whole or part satisfaction of his decree, that is a binding contract which constitutes - - - of the decree in whole or in part and can - - - *B* in bar of execution. But if *A*, as is - - - agrees to accept the transfer of the property in whole or part satisfaction of his decree, at that stage there is no concluded agreement between the parties, but *A* has really made a counter offer which can be accepted by *B* only by performance, i.e., by the actual transfer of the

C. P. CODE (1908) O. 21. E. 2.

property. In this latter case there is no adjustment until the property has been actually transferred. (*Roberts, C. J., Dunkley and Braund, JJ.*) ARUNACHALAN CHETTYAR v. V.M.K.P. FIRM

1938 Rang L.R. 385 = 175 I.C. 498 =
10 R.R. 500 = A.I.F. 1938 Rang 202 (F.B.).

—O. 21, R. 2—Adjustment of decree—Executory contract—If enough.

enforceable even though executory, it might operate as an adjustment of the decree. Distinction must be made, however, between a case where the decree holder accepts as an immediate satisfaction or adjustment of the decree a promise of the judgment-debtors to do something in future and the case where the agreement to accept a decree as adjusted or satisfied only if the thing promised is actually done at a future date (*Bukheriya, 1*) **SERAFUL HAMUR v. NOORALI MEAH.**

420 W.N. 313.

— O. 21, B. 2—*Adjustment—Executory contract.*
An executory contract may form the subject of an adjustment. But where a compromise does not completely extinguish the rights of the plaintiff under the preliminary decree, but provides for their revival in cases of default, such a compromise is not an adjustment.
— *Id.*, *ff.*) V. N. A. FIRM v. BANK OF
A.I.R. 1938 Rang. 353.

—Adjustment—Statement by decree-
standing has been arrived at with
judgment-debtor and that time has been given to com-
plete it—If amounts to.

case to a certain date and on that date consigned the proceedings to the record room.

Held, that the alleged adjustment was merely an inchoate agreement; an adjustment was under consideration and was to be made on the fulfilment of certain conditions; and that it was not an adjustment actually made and completed.

—O 21, B 2—*Applicability—Execution by attachment of decrees in favour of judgment debtor—Realisation—If a payment out of Court.*

Where a decree holder applied for execution by attachment of certain decrees in favour of his judgment-debtor and in pursuance of an order of Court proceeded to realise the amounts due in respect of the attached decrees, the payments made by the judgment-debtor under the attached decrees, are to be deemed to have been made in Court and not outside Court. Hence O. to cases of such payments.

1938 A.W.R. (H.C.) 80 = A.I.R. 1938 All. 141.

—O 21, R 2—Applicability—Payment prior to decree—If can be pleaded.

C. P. CODE (1908), O. 21, R. 2.

O 21, R 2, C. P. Code, applies only where money payable under a decree is paid out of Court. But where money is paid at a time when there was no decree in existence, O. 21, R 2 cannot apply. (*Pollock, J.*)
BHASKAR DATTATRAYA v. NILKANTH DATTATRAYA.
 177 I C 673—11 B N 159—

1938 N L J. 148 = A I R 1938 Nag. 255.

—O. 21 R 2 (Patna Amendment)—*Applicability—Pending execution.*

Order 21, R 2 refers to the stage when there is no execution case pending and when the judgment-debtor comes to notify to the Court an adjustment outside the Court. The rule therefore does not apply when an execution case is pending. (*Mohamad Noor, J.*) **SUKAJMAL v. MANBOUH BHAGAT LALL CHAND RAM.**
 4 B R. 501—174 I C 1007—10 E A. 563—

A I R 1938 Pat. 204.

—O. 21, R. 2 and Limitation Act (IX of 1908), Art. 174—*Payment of decree amount—Decree holder applying to record satisfaction of decree—Absence at the time of enquiry—Dismissal of application—Subsequent application by judgment debtor to enter satisfaction—Dismissal of it as being time barred—If sustainable—Proper procedure.*

the decree-holder denied the payment but was absent from the enquiry and his vakil reported no instructions. The Court struck off the decree-holder's petition but reserved the judgment-debtor's right to claim full satisfaction in proper proceedings. The judgment-debtor

an independent application was not saved by S. 5 or S. 14 of the Limitation Act; but the lower Court was

yet been passed. Any agreement which merely relates to the execution of the decree and does not attack the decree itself could be pleaded in bar of execution (*Pandurang Row and Abdul Rahman, JJs.*) **MEENAK-**

C. P. CODE (1908), O. 21, R. 6.

—*Enquiry into truth or otherwise of adjustment—If necessary—Recording of satisfaction—What amounts to—Duty of Court.*

In order that a certification of adjustment by the decree-holder may have effect, it is not necessary that there should be any specific order by the Court. A certificate presented by the decree holder is none the less operative and ensures none the less for the benefit of the judgment debtor, because the Court has passed no order recording satisfaction of the decree. The record contemplated under O. 21, R. 2 (1) is merely an order that the certificate of the decree holder be placed on the record. The Court is not required to go into the question whether there has or there has not been an adjustment as stated. The certificate is sufficient and all that the Court need do is to say that the certificate shall be kept upon the record. It is only under sub-R. (2) of O. 21 R 2, when the judgment debtor makes an application that it is necessary for the Court to go into the question whether his allegations are or not true (*Allsup, J.*) **CHAMPI BAI v. PEAREY LAL.** 174 I C 254 = 1938 A L R 249—10 E A 555 = 1937 A W R 1200 = 1937 A L J. 1305 = A I R 1938 All 116.

—O 21, R. 2 (3)—*Adjustment and payment—*

—*and non default—Burden of proof—Power of executing Court to inquire into payments. See C. P. CODE, S. 47 and O. 21, R. 2 (3).*

tion of decree. Neither the mistake in the certificate of non-satisfaction nor the omission of the decree holder to have the mistake in the certificate corrected would render his application for execution one not in accord-
 with the decree.
 for execution after
 application which
 was (Faiz Ali and
PRASAD SINGH v.
 1938 Pat. 513.

C. P. CODE (1908), O. 21, R. 19.

amount payable by that party to the decree, when the latter applies to execute his favour. (*Rupchand Bilaram, Agt*) MT. NONIBAI v. JETHANAND.

32 S.L.R. 162 = 10 R.E. 218 = 173 I.C. 574 = A.I.R. 1938 Sind 31.

—O. 21, R. 19—Applicability—Creditors of parties also concerned.

O. 21, R. 19 deals with a case in which only the two parties are entitled to recover sums of money from each other. As such it cannot cover a case in which the creditors of one of the parties are also concerned. (*Thomas,*

—O. 21, R. 19—Applicability—Mortgage suit—Decree for amount recoverable from mortgaged properties—Decree for smaller sum by way of costs in favour of mortgagor personally against mortgagee—Set-off—Right of mortgagor—Defendant to execute his decree.

O. 21, R. 19, C. P. Code, only requires that the two parties must be held entitled to recover sums of money from each other. A decree to A against B for a sum of money to be recoverable from his property is as much a decree to recover the sum of money from B. The decree need not necessarily be a decree directed to recover the sum of money from B personally. Section does not say or provide in what decree is to be executed. The rule would apply to the case of a decree for sale in enforcement of judgment debtor's sale.

—O. 21, R. 22—"Against the party"—Meaning.

Expression "against the party" means adverse to the party. Hence an order directing the execution proceedings to be struck off for the default of the decree-holder

C. P. CODE (1908), O. 21, R. 32.

170 A.O. 500-1930 F.W.N. 403-4 B.E. 108 = 11 R.P. 91 = 19 Pat.L.T. 193 = A.I.R. 1938 Pat. 372.

—O. 21, R. 22—Notice—Absence of—Objection as to—When to be raised.

As the absence of notice under O. 21, R. 22 goes to the root of the jurisdiction of the executing Court, the objection can be taken at any time. (*Fazl Ali and Rowland, Jfs.*) BRAJOBALA DEBI v. MADHUSUDAN. 44 B.E. 446 = 10 R.P. 523 = A.I.R. 1938 Pat. 162.

—Compliance—Minor judgment—Notice issued to him—Court unaware of true age

of judgment debtor—Sale—If nullity—Irregularity—If ground for setting aside sale.

The issue of a notice to a major judgment debtor as if he were a minor is not necessarily fatal to further proceedings in execution, and a sale in execution cannot be held to be null and void on that ground. If no notice of any kind is issued to a judgment-debtor, there is a refusal to carry out the plain duty imposed upon the Court by O. 21, R. 22, C. P. Code, and the Court has no jurisdiction to conduct the sale subsequently. But there is a very clear distinction between a case in which

able against assignee of decree. See C. P. CODE, S. 49 AND O. 21 R. 29. 40 Bom L.R. 158.

—O. 21, R. 31—Decrees executable under.

A decree for delivery of specific movable property can be enforced by the executing method prescribed in the Code. It can be passed only in cases where the facts prove facts which are necessary under the provisions of the Code.

R. 31 do not include money. 37 M. 381 Rel on. (S. K. Ghose and Nasim Ali, Jfs.) KARNANI INDUSTRIAL BANK, LTD. v. BARABANI COAL CONCERN LTD. 42 C.W.N. 523 = A.I.R. 1938 Cal. 471.

—O. 21, R. 32—Scope—Prohibitory injunction—Disobedience by defendant—Remedy of plaintiff—Fresh suit—Necessity.

Where a decree granting a prohibitory injunction is disobeyed by the defendant, the plaintiff is not bound to bring a fresh suit to convert the prohibitory injunction

against the property of a deceased judgment-debtor in the absence of his proper legal representative. The executing Court is not precluded from deciding that a person is not the proper legal representative by reason of the fact that the Court which passed the decree has already substituted that person as legal representative after notice to him but in his absence. When the proper legal representative is some other person, namely the widow of the judgment-debtor, the order substituting a wrong person cannot be taken as a decision to

C. P. CODE (1908), O. 21, R. 46.

carry out his contracts with Z and it was stipulated that all bills made out by Y against Z would be forthwith made over to X who would have the exclusive right to collect the monies due on the bills under an irrevocable power of attorney executed by Y in his favour and the amounts thus realised would be appropriated by X towards repayment of the advances made.

Held, that there was an intention to In favour of X in respect of the money and that an attachment of the bills by must be taken to be subject to that charge. (*Mukher-ja, J.*)

prohibits

It is impossible to hold that the Controller of Patents is a 'person in possession of the name' within the meaning of O. 21, R. 46, C. P. Code. Therefore, the service of a prohibitory order upon the Controller of Patents is not an attachment of the patent within the meaning of S. 51, C. P. Code. (*Panchridge, J.*)

v. HIRALAL BANJARA.

—O. 21, R. 49—Interest of partnership assets—If movable property.

An interest of a partner in partnership assets is intended to be treated as movable property under R. 49 of O. 21. (*Addison and Din Mohammad, JJ.*)

BARKAT RAM v. BHAGWAN SINGH. 177 I.C. 116—11 R.L. 289—A.I.R. 1938 Lah. 65.

—O. 21, R. 50—Decree obtained against firm by serving summons in suit upon two persons as partners—Execution petition stating three others as remaining partners—Leave not obtained from Court—Validity of execution.

Where a decree is obtained against a firm by serving summons in the suit upon two persons as partners of that firm, the mere fact that three other persons are stated to be the remaining partners of the firm in the petition

RADHA CANTA PAL v. PULIN KRISHNA PAL. 177 I.C. 812—11 R.C. 277—42 C.W.N. 310—A.I.R. 1938 Cal. 310.

—O. 21, R. 50(2)—Jurisdiction—Application for

C. P. CODE (1908), O. 21, R. 57.

A purchaser of an attached decree has no right to execute that decree for himself, although no notice of attachment was served upon his vendor previous to the sale by him of his decree. Sub Cl. (6) of R. 53 of O. 21, C. P. Code, affords no help to the purchaser at all. Its purpose is to protect payments made by the

not prevent the attaching creditor from executing the decree himself. (*Henderson, J.*) *SARAT CHANDRA DAS v. JAT NIDRA NATH CHAKRAVARTI.*

15 I.C. 912—11 R.C. 18—66 U.L.J. 459—A.I.R. 1938 Cal.

—O. 21, R. 54 and O. 38, R. 5—Conditional order of attachment before judgment—No order absolute—Requirements of O. 21, R. 54 complied with—No process issued—Validity of attachment.

Where there was a conditional order of attachment

the mere omission to record an order absolute does not make the attachment ineffectual. (*M. C. Ghose, J.*) *AMODINI DAS v. RAGHUNATH MALLICK.* 176 I.C. 166—11 R.C. 45—66 U.L.J. 222—A.I.R. 1938 Cal. 239.

—O. 21, R. 57 (as amended in Nagpur)—Application "struck off" as infructuous but attachment kept pending—Effect of—If dismissed or merely adjourned—Subsequent receipt of assets by Court—Right to rateable distribution—C. P. Code, S. 73.

Under R. 57 of O. 21, C. P. Code, as it now stands after its amendment in Nagpur in 1930, a Court has power to dismiss an execution application and to continue the attachment. Where a Court passes an order to the effect that "the case is struck off as wholly

—O. 21, R. 57—'Default'—Decree holder's in-

arrant of judgment debtor was issued. When the bailiff went to the spot accompanied by the decree-holder's representative, he was informed that the property was already sold. On a report being submitted by him to that effect,

granting leave—If ultra vires.

The Court which passed the decree is competent and has jurisdiction to grant leave to the decree-holder under O. 21, R. 50(2), C. P. Code, even after the

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York, J.
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purchaser to execute decree.

(*son and Din Mohammad, JJ.*) *PEOPLES BANK OF*

C. P. CODE (1908), O. 21, R. 57.

C. P. CODE (1908), O. 21, R. 58.

Where by an order execution proceedings are 'consigned to the record room,' the order is tantamount to 'a dismissal' of the application concerned and a subsisting attachment may come to an end. (*Bhida, J.*)
DURGA DAS BHAGWAN DAS v. PEOPLE'S BANK OF NORTHERN INDIA. 175 I.C. 527 = 39 P.L.R. 967 = 11 R.L. 53 = 39 P.L.R. 967 = A.I.R. 1938 Lah 1

21, R. 57—Execution to record room at request of decree holder.

Where at the request of the decree holder, the executing Court consigned his application for execution to the record room but maintained the attachment,

Held, that the application for execution was dismissed by the executing Court, that the attachment remained with the decree holder and was not possible. (*Rashid, J.*)

O. 21, R. 57—Scope and applicability of 'Default'—Compromise—Execution proceedings 'consigned to record room'—Attachment, if ceases.

For an attachment to come to an end under O. 21, R. 57 the three things necessary are, an attachment 'in execution'—that the decree holder has obtained a decree against the debtor.

175 I.C. 801 = 11 R.L. 53 = 39 P.L.R. 967 = A.I.R. 1938 Lah 1

O. 21, R. 58 and 63—Applicability—Sale mortgaged property in execution—Application mortgagee under O. 21, R. 58 as against purchase Dismissal—Suit by mortgagee on mortgage beyond one

called upon the Post Master General to remit certain sum deposited in the Post Office in connection with cash certificates and allowed the attachment to stand. The Post Master General thereupon made a formal application to the Court under O. 21, R. 58 of C. P. Code. The

h certificates in accordance with Post Office Rules, decree against the Court thereupon

with the provisions of the Post Office Cash Certificate Act. This being the case the Court ought to have adjudicated on the application under O. 21, R. 58.

Held, further, that having regard to the provisions of S. 214 of Succession Act, the Court should not have

178 I.C. 162 = A.I.R. 1938 Cal. 445.
O. 21, R. 58—Enquiry—Necessity—Scope and extent—Refusal to enquire—Revision.

Where an applicant under O. 21, R. 58 claims that he has a share in, and is in joint possession with the

by the the be of the the AN

1900 A.M. 23.

decree against the mortgagor. His proper remedy is to 100 and 103, always that he suit to have the 'Mohammad, J.')

A.I.R. 1938 Lah. 568.
on lodged after execution

R. 58, C. P. Code, lodged in subsequently confirmed and Din Muhammad, A.I.R. 1938 Lah. 568.

O.P.L.R. 522 = 177 I.C. 928 = A.I.R. 1938 Lah. 568.
section under—If can be made

not cease when the property is a valid objection can be made attachment under O. 21, R. 58. NDRA JAGANNATH v. KAYAM 178 I.C. 410 = A.I.R. 1938 Nag 475

O. 21, R. 58—Revision—Dismissal of objections—Interference by High Court. See ODE. S. 115 A. 319.

One R was the owner of cash certificates of certain value in the custody of the Post Master General. He subsequently died but his heirs did not take any steps to

O. P. CODE (1908), O. 21, R. 69.

to O. 21, R. 66. See BIHAR MONEY-LENDERS' ACT, S. 16. 19 Pat.L.T. 760.

—O. 21, R. 69—Non-compliance with—Sale, if nullity.

The failure to comply with the provisions of O. 21, R. 69, C. P. Code, would not alone render a Court sale a nullity, but aggrieved

67 C.L.J. 96.

—O. 21, R. 69 (2) (as amended in Nagpur)—Collector's sale—Collector accepting bid at sale held by Tahsildar beyond seven days—Legality.

In a Collector's sale, it is the Collector who has to accept the bid though it may be the Tahsildar who holds the sale. The period of seven days in O. 21, R. 69 (2), C. P. Code, has been extended to 15 days in Nagpur, and the fact that the Collector

The waiver of the necessity for a fresh proclamation necessarily implies a waiver of objection to any defect appearing on the face of the sale proclamation. A waiver of any necessity for a fresh sale would not imply a waiver of the right to

O. P. CODE (1908), O. 21, R. 89.

R. 92. (R. C. Mitter and Sen, J.J.) NERODE CHANDRA V. OFFICIAL TRUSTEE OF BENGAL

A.I.R. 1938 Cal. 798.

—O. 21, R. 84—Failure to deposit—Irregularity. The omission to pay 25 per cent. of the sale money

—O. 21, R. 85—Applicability—Withdrawal of deposit on sale being set aside.

O. 21, R. 85, C. P. Code, has no application to a case where the purchaser had duly deposited the price but had withdrawn it on the sale being set aside. (Stone, G. J. and Bose, J.) TARACHAND V. KALU.

1938 N.L.J. 207.

—O. 21, Rr. 85, 90 and 90—Failure to deposit 75 per cent. of purchase-money within fortnight—Duty of Court.

The 'publishing' of the sale has reference to all proceedings that take place till the sale is actually held.

ing into Court full amount of the purchase-money within the time allowed by O. 21, R. 85 the Court has

—Failure to

of whole

the cost of

the general stamp to be affixed in the sale certificate only the initial deposit of 25% can in any case be forfeited. The whole amount cannot be forfeited. (Stodart, J.) PONNAMBALA MUDALI, In re.

48 L.W. 418 = 178 I.C. 96 = 1938 M.W.N. 864 = A.I.R. 1938 Mad. 905 = (1938) 2 M.L.J. 529.

—O. 21, R. 86—Scope—Re-sale—Default in payment of balance of sale price—Duty of Court.

O. 21, R. 86, C. P. Code, makes it obligatory on the Court to re-sell the property in case default is made in payment of the balance of the purchase money as required by O. 21, R. 85. The discretion vested in the Court is only as regards the forfeiture of the deposit. (Venkataramana Rao, J.) MONNI AIDRUZ V. SAPPANI MIRA MOHIDEEN.

1938 M.W.N. 1031 = 48 L.W. 659 = (1938) 2 M.L.J. 833.

—O. 21, R. 89—Conditional deposit—Validity—Alternative applications under Rr. 89 and 90—Main

interested

ion to his

not accept

A judg-

ment-debtor made applications under Rr. 90 and 89.

The prayer under R. 89 was in the first place in the

being on him who applies for reversal of the sale, the Court has no option but to confirm the sale under O. 21,

■ P. CODE (1908), O. 21, R. 89.

alternative "It was to be taken into consideration only if the first prayer in the application which was the main prayer was not granted, namely, if the sale was not set aside under R. 90. Further, even this alternative prayer was hedged round with conditions. The deposit made was to be retained only if the sale was set aside. If the sale was confirmed, the main prayer under the judgment-debtor subsequent

Held, that the application was not maintainable and the date on which the application was dropped must be on which the application under F application if more than thirty days after the date of the sale was accordingly time barred. (*Lobo, J.*) HARIRAM DIPCHAND v. KAGHUNATH JETHABHAI.

177 I.C. 952 = A.I.R. 1938 Sind 177.

—O. 21, R. 89—Construction—Deposit not accepted by decree holder—If amount received by decree-holder.

R. 89 has to be strictly construed and even a mistake

DIPCHAND v. KAGHUNATH JETHABHAI.

177 I.C. 952 = A.I.R. 1938 Sind 177.

—O. 21, R. 89—Deposit under—Sufficiency—Test—Amount mentioned in proclamation of sale.

Where in execution of a mortgage decree, the properties were sold and an application was made by the mortgagee-debtor to set aside the sale, the

been deposited as required by O. 21, R. 89. (*Leach, C. J. and Burn, J.*) SUBRAMANIA IYER v. VISWANATHA PILLAI.

46 L.W. 922 = 1938 M.W.N. 15.

—O. 21, R. 89 and Contract Act, § 72—Failure to certify after receiving satisfaction—Sale in execution of such satisfied decree—Deposit under O. 21, R. 89 by owner and setting aside of sale—Right of owner to recover it from the decree holder.

Where a decree holder whose decree is found to fall to enter up satisfaction of the decree to execute his decree fraudulently and the sold in court auction and where the owner's amount due under O. 21, R. 89, C.P. Co. the sale set aside, on a question whether such an owner can recover the money from such a decree holder.

Held, that the owner's right to recover back the money paid under compulsion of execution which

O P. CODE (1908), O. 21, R. 89

(1938) M.W.N. 164 = 47 L.W. 188 = A.I.R. 1938 Mad. 493 = (1938) 1 M.L.J. 829.

—O. 21, R. 89—Interpretation—If refers to withdrawal by decree-holder of sale proceeds deposited.

The words "less any amount which may, since the

—O. 21, R. 89—Judgment-debtor depositing five per cent. for payment to auction-purchaser—Allegation that decree satisfied out of Court—Sale, if can be set aside.

A judgment-debtor can deposit five per cent. of the purchase money in Court to be paid to the auction-purchaser and get the sale set aside without depositing the

execution transferred by Court—Application to Court to set aside sale—If incompetent, See LIMITATION ACT, § 4.

40 Bom.L.R. 162.

—O. 21, R. 89—Poundage fee—Duty of judgment-debtor to pay.

There is nothing in O. 21, R. 89 which makes it necessary for the judgment debtor to pay in the pound-

being set
nt debtor
for any
paid in
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ARDHAN
O 188 =
Cal 623.

—O. 21, R. 89—Right to apply—"Interest"—Sale by judgment-debtor after Court sale—Application to set aside sale by judgment debtor and purchaser—Competency.

A judgment-debtor who, after the Court sale, transfers his interest in the property sold in execution of a decree, retains sufficient "interest" within the meaning of O. 21, R. 89 to allow him to apply under the Rule. But the

Although O. 21, R. 89 speaks of any person, either owning such property or holding an interest therein by virtue of a title acquired by such sale, it does not confer the right to make a deposit on a person who had purchased the property from the judgment debtor.

before confirmation thereof—Power of Court to refuse to confirm sale.

subsisting decree. (*Venkataramba Rao and Abdul Rahman, J.J.*) PAPPU REDDIAR v. PICHU AYYAR.

V. D. 1938-22

O. P. CODE (1808), O. 21, R. 90.

It cannot be said that in no circumstances can a sale be confirmed by the Court after the date of the Court to see that the application is barred.

(*Namatullah, Ag.C.J. and Allsop, J.*) COLLECTOR OF BENARES v. JAI NARAIN RAI.

173 I.C. 428 = 110 R.A. 480 = 1938 A.I.R. 142 =

1937 A.W.R. 1222 = 1937 A.L.J. 1349 =

A.I.R. 1938 All. 89.

—O. 21, R. 90—*Applicability—Objection as to saleability of property.*

O. 21, R. 90, C. P. Code, applies only to irregularities or fraud in publishing or conducting a sale and not to questions of saleability of the property concerned. (*Gruer, J.*) MAROTI v. KISANLAL 1938 N.L.J. 389 =

A.I.R. 1938 Nag 558.

—O. 21, R. 90—*Application under—Power of Court to dismiss for default.*

VALIA

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—O. 21, R. 90—*Irregularity—Absence of attachment.*

The absence of attachment prior to the sale of immovable property more than an hour before the sale in the form of such want of attachment. (*Addison*) RAM CHUNI L.

—O. 21, R.

R. 22 issued to by guardian—Effect of—Sale—If to C. P. CODE, O. 21, R. 22.

—O. 21, R. 90—*Irregularity—Sale under hammer*

NARAIN SINGH v. KANDHAI LAL DURGA

10 B.P. 129 = 177 I.C. 138 = 4

—O. 21, R. 90—*Material irregularity of notice under O. 21, R. 22—Effect on sale.*

C. P. CODE (1808), O. 21, R. 90.

Where the Naib Tahsilidar holding a sale adjourns it to another date, but informs no one but the decree holder about the adjournment and does not specify the hour to which the sale is to be adjourned, the sale is irregular. (*F.C.*)

20 N.L.J. 283.

O. 21, R. 90, C. P. Code, no doubt directs the sale officer to record his reasons for the adjournment of the sale. But his failure to record his reasons would not amount to a material irregularity, for it cannot be said to go to the root of the matter. (*Bose and Puranik, J.J.*) ANANDI PRASAD v. GOVINDA BAPU.

112 B. (1938) Nag. 436 = 110 E.N. 210 =

172 I.C. 465 = A.I.R. 1938 Nag 107.

—O. 21 R. 90 and 69—*Material irregularity—Adjournment of sale by sale officer—Omission to specify hour.*

The failure of the sale officer to specify the exact hour to which the sale is adjourned is a material irregularity.

applicant has sustained substantial loss by reason of such irregularity. (*Bose J.J.*) ANANDI PRASAD v. GOVINDA BAPU. 112 B. (1938) Nag. 436 = 172 I.C. 465 = 110 E.N. 210 = A.I.R. 1938 Nag. 107.

—O. 21, R. 90—*Material irregularity—Gross under-valuation in sale proclamation—Effect of.*

Where the most prices shown in the sale proclamation

is a material irregularity—Non-com-

See C. P. CODE, O. 21,

20 N.L.J. 283.

—O. 21, R. 90—*Material irregularity in publishing and conducting sale—Auction price grossly inadequate.*

O. 21, R. 90—*Parties—Auction purchaser—Against order setting aside sale—Necessity to*

ment of sale—Adjournment announced only to decree-holder—Failure to specify hour of adjourned sale.

In an appeal against an order setting aside a sale made on an application for that purpose, the auction-

C. P. CODE (1908), O 21, R. 90.

purchaser who had on notice being given to him failed to express his interest one way or another need not be added as a party and his absence is not fatal to the appeal. (*Stone, C. J. and Bose, J.*) BIRDICHAND N. GANPAT-
RAO

1938 N.L.J. 303-
A.I.R. 1938 Nag. 525.

—O. 21, R. 90—*Suit on mortgage—Decree—Sale in execution—Judgment debtors—Sale of properties—If possibility of sale—Later mortgages by debtor a ground to hold in by the sale—Reduction of irregularity.*

In a suit on a mortgage properties in execution of

debtors had executed three other later mortgages for very large amounts and could not therefore get any surplus available to them even if a fresh sale should be

(almost as a matter of common form) without any more

given in the proclamation of sale and that the dimensions of the houses were not stated in the proclamation

C. P. CODE (1908), O. 21, R. 90

deposit—Appeal—Order refusing to accept security—Revision—Interference.

Under O. 21, R. 90 (1), C. P. Code, as amended in Patna, the Court in an application to set aside an execution sale, has a discretion to accept landed property as security instead of a cash deposit in a proper case, if the Court refuses to dispense with cash deposit and to accept landed property as security and then dismisses

A.I.R. 1938 Pat. 240.

—O. 21, R. 90, Proviso (N.W.F.P.)—*Execution—Notice of judgment—Illness—*

that the proviso to O. 21, R. 90 however applied to the case and the sale could not be set aside as the objection

—O. 21, R. 90, Proviso (ii) (Calcutta High Court)—*Inapplicability—Defect in sale proclamation*

C. P. CODE (1908), O. 21, R. 91.

FIRM v ANDATHAL.

178 I.O. 118=

A T D 1000 Page 500

—O. 21, Rr. 91:

sold turning out to be
debtor—Purchaser if
decree holder—Decree
ent position—Right to
of sale and satisfaction of decree.

There is at present no right either
for an auction purchaser to recover
decree holder, the purchase price of
property sold turning out to be not a
judgment-debtor. As regards the decr
purchaser his rights are limited to those granted by C.
P. Code, O. 21, Rr. 91 and 92, and if the auction-sale is
confirmed that becomes *res judicata* between him and
the judgment-debtor and hence he cannot reopen the

C. P. CODE (1908), O. 21, R. 92.

■ mandatory on the execution Judge to send notice to

A sale cannot be said to be automatically confirmed

1938 O.A. 684—A.I.R. 1938 Oudh 221.

—O. 21, R. 92—Jurisdiction—Collector's sale—
Application beyond 30 days of acceptance of bid by
Collector for time for payment of decree amount—
Failure to offer payment of decree amount and 5%—
Absence of allegation of irregularity—Order setting
aside sale on ground of inadequacy of price—Legality.

In the absence of any application under R. 89, 90 or
91, C. P. Code, an execution sale has to be confirmed

—O. 21, Rr. 91 and 93—Scope—If exhaustive—

Execution sale—Diligence—Claim by dispossessed
holding judgment-deb
plication by purchaser

Dismissal on the ground that the remedy was by way of
suit—Suit by purchaser—Maintainability—Remedy of
purchaser—Omission to sue to set aside order on claim
—Effect.

Appellant who was the auction-purchaser of certain
properties sold in execution of decree lost some of them
as a result of claim proceedings under O. 21, R. 100, C.
P. Code, the Court holding that the judgment debtor
had no title or saleable interest in them. His application
to the execution Court for repayment of the purchase
money of the properties he had lost thus w
the ground that his remedy was a regul

time for time for payment of the decretal

set aside the sale on the ground that the price fetched
was inadequate. (Greenfield, F.C.) RAMCHANDRA v
ARJUN. 1938 N L J. 10.

—O. 21, R. 92—Order refusing to set aside sale—

set

A.

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17.

re—If controlled or over-

Lenders' Act See C. P.

11. 1938 N L J. 15.

e—If controlled by C. P.

1. See C. P. DEBT CON-

1938 N L J. 60.

—O. 21, Rr. 92 and 93—Withdrawal of deposit on

O. 21, R. 93.

Application to set aside sale—If to be made to Collector
—Jurisdiction of Court. See LIMITATION ACT, S. 4

40 Bom L R 152

—O. 21, R. 92—Application under—Notice to
auction purchaser—If mandatory.

Before the objection application of the judgment-
debtor under O. 21, R. 92 is adjudicated upon, it

—O. 21, R. 92 (1) and (2)—Confirmation of sale—
Power of Court to refuse—Sale under final decree, pend-
ing appeal from the preliminary decree—Variation of
preliminary decree—Sale in favour of third party, if
can be set aside.

Where a final mortgage decree was passed pending an
appeal from a preliminary decree and a sale is held, the

C. P. CODE (1908), O. 21, R. 92.

fact that in the appeal the preliminary decree was varied cannot be a ground for setting aside a sale to a third party. Further under O 21, R 92 (1) the Court is bound to confirm a sale unless there is a successful or effective application under R. 89, 90 or 91 of O. 21. It is quite clear that the proviso to R. 92 (2) does not relate to R. 92 (1). (*Stone, C. J. and Bose, J.*) **BIRDI CHAND & GANPATRAO**
1938 N L J. 303-4
A.I.R. 1938 Nag. 525

— O 21, R. 92 (1) and (2)—Scope of—Auction-purchaser, if can apply for confirmation of sale.

There is no provision in the Code of Civil Procedure for an application by the auction-purchaser for confirmation of the sale: confirmation follows automatically under R. 92 (1) and the setting aside follows fully under R. 92 (2) of O. 21. (*Guru and Rao, JJ.*) **SATYANANDAM F. NAMMAVVA.**
1938 M.W.N. 656-47
A.I.R. 1938

— O 21, R. 93—Execution sale confirmed by auction purchaser to be put in possession—Possession not given on account of decree passed in favour of another in regular suit claiming property as his own—Right of auction-purchaser to refund of

an auction purchaser applied to be put in possession of the property and the decree holder in the regular suit put in an application objecting to possession being given to the auction purchaser. It was held that the auction purchaser could not be given possession of the property and the decree holder in the regular suit was entitled to possession. The auction-purchaser could apply for money accordingly he applied for

Held, that the application for refund could not be made under R. 93 as the sale was not set aside under O. 21, R. 92 and that the auction-purchaser was not entitled as of right to get any refund in execution proceedings. (*Almond, J.C. and Mir Ahmad, J.*)

decree holder can withdraw purchase money before confirmation of sale

O 21, R 93 is intended to arm the Court with power to order the return of the money to the purchaser in case the same has been paid to any person. It should not be read as containing the decree holder is entitled to the money before confirmation of sale proceedings in the executing proceedings. (*Ramchandra Mahottrao v. B.A.*)
I.L.R. (1938) Nag.
10 R.N. 295=A.I.R. 1938 Nag 54

— O 21, R. 93—Judgment-debtor having no saleable interest in property sold—Right of purchaser to sue for refund of purchase money.

Per *B. K. Mukherjee, J.*—A suit for refund of purchase money on the ground that there is no saleable interest of the judgment debtor in the property sold, does not lie at the instance of the auction purchaser. The auction purchaser has now got under the C.P. Code set aside the sale under O 21, R 91, by an application made within 30 days from the date of sale, he can apply for refund under O. 21, R. 93. Wherever the invalidity of the proceeding is due to carelessness, or neglect of duty on the part of the holder, the auction purchaser can sue to recover the

C. P. CODE (1908), O. 21, R. 100.

purchase money on the ground of failure of considera-

— O 21, R. 94—Sale certificate—Effect of—Property not proclaimed or put up for sale but included in sale certificate—Purchaser's title to.

A sale certificate is only a formal document confirming what was purchased in the Court auction and cannot confer title on the purchaser to property which was never included in the proclamation of sale or put up for sale, though included in the sale certificate. The

ing in the name of third party—Competency.

The law recognizes only the method under which a man can sell his property to another and that is by a registered sale deed. There is, however, one exception operation of law, by a person at a sale certificate that the purchaser got a title and the property vested in him from the date of the sale. The sale certificate will not be a title deed but would be statutory evidence of transfer in place of

transfer or arrangements made by the auction purchaser with a third person. (*Rachpal Singh, J.*) **MAKHAN LAL v. BALDEO PRASAD.**
176 I.C. 774=

11 E.A. 147=1938 A.W.R. (H.C.) 830=
1938 A.L.R. 681=1938 A.L.J. 625=
A.I.R. 1938 All. 471.

Second application by auction-purchaser—Starting point—

A second application for delivery of possession under O 21 R 95, C.P. Code, can be made by the auction-purchaser if it is otherwise within time. The period of 30 days under Art 167 of the Limitation Act is to be counted from the date of the sale or obstruction not from the date of which an application was made and dismissed for want of due diligence. (*Rama Sundari Devi v. N.*)
176 I.C. 816=
185=42 C.W.N. 478=
A.I.R. 1938 Cal 352.

— O 21, R. 95 to 99 and S 47—Relative scope of

O 21, R 95 and the subsequent rules in O 21, relating to delivery of possession to the decree-holder or auction purchaser fall under an order relating to the execution of decrees and orders. When a question arises as to the kind of possession to be delivered, it is a

for restoration of possession

C. P. CODE (1908), O. 21, R. 100.

Where an applicant under O. 21, R. 100, C. P. Code, contended that he was in possession in spite of a symbolical delivery and in the alternative prayed that if it was found that he was not in possession, he should be

A.I.R. 1938 Nag. 442.

—O. 21, R. 100—Dispossessed co owner—If can apply under.

A co owner who is only entitled to joint possession

A.I.R. 1938 Nag. 442.

—O. 21, R. 100—Scope—Possession—Person in possession subject to mortgage but not made party to suit

to the mortgage right of the decree holder. (*Dhavit J.*) RAMCHANDRA JHA V. PRASAD THAKUR.

174 I.C. 382 (1) = 4 B.R. 439 = 10 P.W. 885 =

A.I.

—O. 21, R. 103—Applicability—Property in execution of money decree—Mortgage—Subsequent sale in execution decree—Purchaser under mortgage delivery in disposition of purchaser under money decree—Application by latter—Dismissal—Suit for possession on redemption—Limitation.

A money decree holder purchased his judgment debtor's property which was subject to a mortgage in execution of his decree pending against the judgment debtor mortgaged possession. After the sale but before the execution of the mortgage decree it was purchased by the mortgagee who duly obtained delivery of possession. The prior purchaser under the mortgage then applied for redemption under O. 21, R. 100, C. P. Code.

The application was dismissed. On 30th July, 1937, the Court granted a suit claiming, *inter alia*, possession of the property upon redemption of the mortgages on the ground that

C. P. CODE (1908), O. 21, R. 103.

C. J. and J. LAL.

—O. 21, R. 103—Scope—Purchaser of property in execution of money-decree pending suit for possession of same property—Objection by to delivery of possession in execution of decree for possession in former suit—Claim

session of an estate the respondent's predecessor in interest sued the person then in possession of that estate for recovery of money for goods sold and delivered

of which he put up a mortgage. The respondent obtained a decree against the petitioner himself. The respondent then attempted to execute the decree against the respondent in possession of the property. The respondent pleaded that the petitioner himself was a party to the proceedings in execution of his decree and that he was therefore not entitled to sue.

was to bring a suit for possession of the property, in which the question of title and the question of priority of his decree as well as the respondent's title by reason of his purchase in execution might be properly adjudicated.

10 B.P. 303 (1) = 10 Pat L.T. 833 =

A.I.R. 1937 Pat. 615.

—O. 21, R. 103—Scope—Suit under—Enquiry—If limited to possession on date of adverse order—Duty of plaintiff.

It is not correct to hold that in a suit under O. 21, R. 103, C. P. Code, the Court has merely to ascertain

—MAINTAINABILITY WITHOUT CLAIM FOR POSSESSION, SPECIFIC RELIEF ACT, S. 42, PROVISIO.

1938 P.W.N. 455.

—O. 21, R. 103—Suit under—Prayer for possession—Court fee payable. See COURT-FEES ACT, SCH. II, ART. 17.

1938 N.L.J. 107.

—O. 21, R. 103—Suit under—Proper parties.

As it is essential for the plaintiffs in a suit under O. 21, R. 103, C. P. Code, to establish their right not

1938 P.W.N. 455 = 19 Pat L.T. 833 =

—O. 21, R. 103—Court-fees—Suit under—Advalorem fee—If payable obiter.

The view that in a suit under O. 21, R. 103, C. P. Code, the plaintiffs would have to pay court-fees on that part of the claim which amounts to a prayer for recovery of possession is erroneous. (*Courtney Terrell*,

C. P. CODE (1908), O. 21, R. 139-All

C. P. CODE (1908), O. 22, R. 4

garnishee has been held to exist and an appeal is preferred, it is on account of the special provision in O. 21, R. 139(1). The words refer to those conditions of an appeal as if it were a decree—and one of such conditions of an appeal from a decree for money is the payment of *ad valorem* court fees. (*Bennet, A.C.J.*) RAM CHANDRA v. RAM LAL.

175 I.C. 310 = 10 R.A. 679 =
1938 A.L.R. 410 = 1938 A.W.R. (H.C.) 158 =
1938 A.L.J. 232 =

—O. 22—Applicability—Decree
dismissal of suit—Right of legal
appeal.

The provisions of O. 22, C. P.
where a party dies after a final decree has been passed.
If a plaintiff sues and dies after his suit
dismissed, his legal representatives may a
decree without making any application to
the record in his place. (*Beckett, J.*)
v. CHANDGI.

—O. 22, R. 3—Appeal by deity—Abatement against
one of shewants—Appeal, if competent.

Per *Jack, J.*—An appeal by a deity is not incom-
petent merely by reason of its being allowed to abate as
against the heirs of one of the shewants who died
pending the appeal (*Jack and Khundkar, J.*)
LAKSHMI NARAYAN JIE v. JAGADISH CH SUR.

42 O.W.N. 837 =
177 I.C. 477 = 11 R. 247 = A.I.R. 1938 Cal 541.

—O. 22, Br. 3 and 8—Suit by daughter for posses-

K brought a suit for possession of certain properties
as constituting the estate of her deceased father. The

meet the costs.

Held, that the
property of the insolvent petitioner, and though the peti-
tioner might maintain a suit to recover the after-acquired
property in the hands of a stranger unless the receiver

time the appeal as a legal representative in the strict
his deceased

Pandrang

NAGAYYA

Mad 420 =

R.M. 773 =

L.W. 363 =

413 (F.B.).

real—Decree

common to all defendants respondents—Abatement
of appeal against one of them—Abatement in toto

Although the decree appealed against is common
to all the defendants against whom the suit was
dismissed, the abatement of appeal against one of the
defendants-respondents does not have the effect of the
abatement of the entire appeal if the interest of that
defendant is quite distinct and separate from that of the

—O. 22, R. 4—Abatement of appeal—Legal repre-

—O. 22, R. 4—Applicability—One of the implead-
ed non appealing plaintiffs and a *pro forma* defendant
dying—Legal
Appeal if abate
CABILITY.

—O. 22, E

pretentatives

against him.

The failure to implead all the legal representatives of
a deceased defendant does not cause the suit to abate as

ANAN v. MAJIL.
10 R. Pesh 46 = A.I.R. 1938 Pesh. 4.

—O. 22, Br. 4 and 12—Legal representative
judgment-debtor not brought on record—Execution
ceding—If a nullity.

C. F. CODE (1908), O. 22, E. 4.

The failure to bring the legal representative of the judgment debtor on record does not necessarily make the proceedings a nullity. (*Pollock, J.*) *MST. GOMTI v. SOCIETY GHAT PINDARAI*. 1938 N.L.J. 166=

A.I.E. 1938 Nag. 308.

—O. 22, R. 4—Legal representatives of one of defendants not impleaded in appeal—Abatement of appeal in toto—Test

If a decree is made jointly in favour of all the defendants, and their interests *inter se* are neither separate nor separable, it may lead to two conflicting decrees, if an appeal is allowed in the absence of some of the defendants in whose favour the original decree stands. In cases like these therefore, the non inclusion of some of the defendants as respondents must natural

were brought on record. The suit was dismissed. In appeal from such decree, instead of impleading these legal representatives as respondents, the name of the deceased defendant was mentioned. The appellant

being disturbed *qua* his own share of the property and relief was claimed against him to that limit only. The appeal, in these circumstances, abate as a whole merely by the omission to implead legal representatives of the deceased defendant as respondents. The appeal therefore could proceed against those defendants that were impleaded as respondents. (*Aldison and Din Mohammad, JJ.*) *HAYAT v. MUTALLI*. 18 Lah 746=40 P.L.R. 273=

175 I.C. 819=11 R.L. 67=A.I.R. 1938 Lah 35.

—O. 22, R. 4 (3)—Appeal—Death of one respondent—Legal representative not brought on record—Effect

Where during the pendency of an appeal from a

C. P. CODE (1908), O. 22, E. 9.

The defendants thereupon appealed. During the pendency of the appeal one of the plaintiff-respondents died and no attempt was made to bring his legal representatives on record.

Held, that because of the abatement with respect to the deceased respondent, the whole appeal abated. (*Stone, C.J. and Bose, J.*) *GHANARAM v. BALBHADRA SAL*. I.L.R. (1938) Nag. 370=173 I.O. 44=

10 R.N. 266=A.I.R. 1938 Nag. 42

—O. 22, R. 4 (3)—Suit for partition against brothers—Appeal against order passed in execution—Death of one brother pending appeal—Effect—If whole appeal abates.

A suit for partition and proceeding in execution of such order was pending and at all the brothers and

appealed against was passed. (*Davis, J.C. and Mehta, J.*) *MT. AMAN KHATUN v. ABDUL RAHMAN*.

A.I.E. 1938 Sind 239.

—O. 22, R. 5—Duty of Court—Rival claimants—

which he has for a libel, then the law as to libel in his favour. (*M.*) *RAJ BAHADUR v. ADMINISTRATOR GENERAL OF THE ESTATE OF C.J. BARBAR*. 1938 R.D. 431=

1938 A.W.R. (E.B.) 805=

1938 A.L.J. (Supp.) 128.

—O. 22, R. 9—Appeal—Suit in High Court—Abatement—Order setting aside—Appealability—Judgment. See LETTERS PATENT (BOM.), CL 15

40 Bom. L.R. 658

—O. 22, R. 9 (2)—“Sufficient cause”—Meaning of

—Death of defendant—Delay in applying to set aside abatement—Ignorance of legal representatives—Sufficiency.

B.J. Wadia, J.—Under O. 22, R. 9 (2), C. P. Code, read with S. 5 of the Limitation Act, the Court has a discretion to excuse delay. In exercising the discretion, which must be judicially exercised, the Court should construe the words “sufficient cause” liberally, having

regard to the facts and circumstances of the case. Instances of a deceased respondent residing in a foreign place may be a sufficient cause for delay in seeking to set aside the decree on account of negligence or carelessness or unnecessary delay. (*Beaumont, C.J. and J.*) *M. F. ALMEIDA v. RANCHANDRA RAM ASAYLE*. I.L.R. (1938) Bom 704=

17 I.O. 734=11 E.B. 119=40 Bom L.R. 658=

A.I.R. 1938 Bom 408.

—O. 22, R. 9 (2)—Sufficient cause—Appeal—Ignorance of respondent—If ground for setting aside

of abatement of appeal—Duty of appellant to be diligent.

against some persons upon a mortgage executed by them, |

C. P. CODE (1908), Q. 22, R. 9.

Ignorance on the part of an appellant of the death of the respondent to the appeal is a sufficient cause within the meaning of O. 22, R. 9, C. P. Code. The appellant is no doubt required to be diligent in prosecuting his appeal, but when he has succeeded in obtaining an appeal served on the respondent, he must be taken to have done all that is required of him in connection with the appeal. The appellant can not reasonably be expected and is not required to inquire into the death of the respondent.

—O. 22, B. 9 (2)—"Sufficient cause"—"Ignorance of death of respondent"—If ground for setting aside abatement—Limitation Act, S. 5.

appellant therefore does not become aware of the death of the respondent for a long time after the death, and

—O. 22, B. 10—Applicability—Final decree passed
in suit—Discretion of Court.

Per Costello, J.—O. 22, R. 10, C.
apply before a final decree or order
made in the suit.

Per *Derbyshire*, C. J.—Under O 42, R. 10, L. r.

—O. 22, R. 10—Person putting forward adverse claim—If can come in.

C. P. CODE (1908) O. 23, R. 1.

(1938) M.W.N. 516-A I.R. 1938 Mad. 757-
(1938) 1 M.T.J. 889

—O. 22, II 10—*Suit against Municipality—*
Administrative—
against Muni-

A suit was brought against a Municipality to recover certain amount. Before the decree was passed the Municipality was succeeded by the Government and neither the administrator nor the Municipality was subsequently decreed to execute it against the administrator. Administrator raised an objection.

Held, that the decree was a nullity as the legal representative of the Municipality was not brought on record

18' Pat L T. 1014.

—O. 22, R. 11—Scope and applicability—If applies to appeals under S. 47, C. P. Code, *See* C. P. CODE.

1938 N.L.J. 312.

—O 22. B. 12—*Applicability—Appeal from order*

—O. 22, R. 12—Scope and effect—Execution proceedings, if abate—Procedure to be followed in case of decedent holder's death.

Abatement does not apply to execution proceedings. The result of that is, however, that the heirs need not

O, 22, R, 3, but may

or may file a fresh

Post, J) TEIRAI 2.

—O 23, B. 1—Applicability—Appeal—Withdrawn
—Right of appellant—Power of Court to grant leave to
withdraw. See C. P. CODE, S. 107 AND O. 23, B. 1

40 Bom L.R. 895

—O 23, R 1—Leave to withdraw—Duty of Court

—Procedure
Where a person applies for permission to withdraw

C. P. CODE (1908), § 23, R. 1.

... it cannot be withdrawn. On the dismissal of the appeal, the suit automatically is dismissed and the Court ceases to have any further jurisdiction in the matter and it ceases to have any power to grant permission to the plaintiff to institute a fresh suit on the same cause of action. A suit cannot be dismissed on the basis of the principle of *res judicata*. (Mad., J.J.) SHAHU v. MT.

178 I.C.

—O. 23, R. 1—Scope—

—Reference to arbitration pending—Power to permit withdrawal of suit.

Once a suit has been referred to arbitration, so long as that reference stands, the Court which has made the reference has no power to pass any order which in any way would affect the subject-matter of the suit. The Court has consequently no jurisdiction after the suit has been referred to arbitration and as long as the reference

—O. 23, R. 1—Scope—Express application for

them—If can be granted.

Where a suit in which some of the defendants are minors is referred to arbitration without the leave of the Court and the arbitrators give an award, the Court has no jurisdiction to allow the suit to be withdrawn against

—O. 23, R. 1—Withdrawal
ment of costs as condition precede
such payment—Costs paid subseq
suit—Maintainability of suit.

for such payment, the non-payment of costs does not render a fresh suit *bad ab initio* and the payment of

C. P. CODE (1908), O. 23, R. 1.

The costs were paid with the permission of the Court, before the commencement of the hearing of the fresh suit on an objection as to maintainability of the fresh suit.

Held, that whether the condition as to payment of costs attaches to the permission to withdraw or to file a fresh suit, the Court extended the time under S. 148, C.P. Code, for payment of the costs. Even if the condition

—O. 23, R. 1 (2) (a) and (b)—Scope of—Leave to
withdraw—When could be granted.

The two sub-Cls. (a) and (b) of sub-R. (2) of R. 1 of O. 23, C. P. Code, are worded in an entirely different manner and they are intended to cover different circumstances. Cl. (b) is not limited to cases in which the Court thinks that the suit must necessarily fail. There may be other sufficient grounds on which it

the plaintiff to withdraw his suit.

JAW DWE v. U SAN HLA.

'g L.R. 270—A.I.R. 1938 Rang. 389.

1 (2) (b)—"Other sufficient grounds"

The "other sufficient grounds" in Cl. (2) (b) of R. 1 *generis* with the *Tek Chand, J.*

39 F.L.R. 1010.

"Subject matter"

gates of tenant

tenant turning

up—Subsequent suit on surrender by tenant—If barred.

The bar in O. 23, R. 1 (3) is in respect of the subject-matter and not the cause of action, subject matter means the series of acts and transactions alleged to exist giving rise to the relief claimed. A surrender by a tenant of his holding is a clearly different from his death. On

the prior suit based on his
S.M. and Bomford, J.M.)

MALLAVINDA NATHAN LAL

1938 E.D. 174—1938 A.L.J. (Supp) 2—

1938 A.W.R. (B.R.) 93.

O. P. CODE (1908), O. 23, R. 2

Held that the subsequent suit of A was not barred by O. 23, R. 1 (3) (*Blackney, J.*) MA PAN HUR MAUNG LU THANT. 177 I.C. 211-11 R.R. 103-A.I.R. 1938 Rang 210

—O. 23, R. 2—Applicability—Suit in High Court—Plea by defendants of being agriculturists—Plaintiff withdrawing suit with liberty—Subsequent suit in inferior Court—Right to deduct period of prior suit—Limitation Act, S. 14—Applicability.

The C. P. Code and the Limitation Act are rules of procedure and must be interpreted strictly. A plaintiff who prays for an order for withdrawal of his suit with leave of the Court under O. 23, R. 1, C. P. Code, must face R. 2 of O. 23, and cannot bate the benefit of S. 14 of the Limitation Act. In a suit under the High Court the defendant pleaded that they were agriculturists. The plaintiff applied for leave to withdraw the suit under O. 23, R. 1 with liberty to file a fresh suit, and the Court granted the same. Subsequently the plaintiff filed a suit in a subordinate Court in which he claimed the right to deduct the period when he was prosecuting the first suit, under S. 14 of the Limitation Act.

Held, that the High Court in the prior suit had jurisdiction to decide the plea raised by the defendant as to their status and that the case fell under O. 23, R. 2, C. P. Code, but not under S. 14 of the Limitation Act, and the plaintiff could not therefore avail himself of the benefit of S. 14, Limitation Act. J.J. ACHUT DADAJI JOSHI v. DEV. I.L.R. (1938) Bom 32. 175 I.C. 533-10 R.R. 565.

—O. 23, R. 3—Adjustment by statement of plaintiff—Statement of.

Where a defendant offers to bind himself by the statement of the plaintiff and the plaintiff makes the statement, it follows that the claim against the defendant by him has been adjusted. The plaintiff has to be claim and a decree. NARAIN DAS v. GH. 1938 A.L.J.

176 I.C. 499-1938 A.L.J. 543-11 R.R. 40-A.I.R. 1938 All 353

—O. 23, R. 3—Matter relating to suit—Meaning of.

Where a widow who was a party to a partition suit was held by mutual agreement entitled to maintenance from a date prior to the date of the suit, a provision in a compromise deed between the parties for the maintenance of the widow from the date of the partition suit was held to be valid.

173 I.C. 980-10 R.R. 218-1938 O.L.R. 154-1938 W.N. 348-1938 O.A. 240-A.I.R. 1938 Oudh 103

—O. 23, R. 3 and Sch. II, Para. 20—Power to adjust disputes by compromise—If affected by para. 20, Sch. II, C.P. Code.

The Court has power under C. P. Code, O. 23, R. 3 to record and pass a decree in terms thereof.

this agreement which the Court has power under C. P. Code, O. 23, R. 3 to record and pass a decree in terms thereof.

O. P. CODE (1908), O. 26, R. 8.

principle there is no difference between an agreement of the parties and an award by arbitrators who are appointed by the parties themselves to settle their dispute, because in either case the parties are bound by their own agreement. An award therefore assumes the character of an agreement as soon as it is delivered whether the parties accept it or not. (*Niyogi, J.*) KANDHAR RAM v. SANTADAR.

178 I.C. 29-A.I.R. 1938 Nag 492.

—O. 25, R. 1—Applicability—Revision application—Security for costs—Power to make. See C. P. Code, S. 151. 40 Rom.L.J. 1025.

—O. 25, R. 1—Discretion of Court.

The power given to the Court under O. 25, R. 1, C. P. Code, is discretionary, and in deciding whether to exercise that power, the Court must have regard to the circumstances of each case, and unless it be shown that an order for security is necessary for the protection of the plaintiff's interest, it will not be made.

—O. 26—Reference to Commissioner of issue as to whether account is mutual, open and current—Legality.

It is not open to a Court to refer for decision to a Commissioner for accounts, an issue as to whether there was a mutual, open and current account between the parties. Such procedure is unauthorized by O. 26. All

HARGOVIND MOHANLAL. 177 I.C. 442-11 R.R. 129-A.I.R. 1938 Rang 270.

—O. 26, Rr 4 and 5—Duty of Court—Witnesses late—Application for—Propriety—Revision

of a commission to residing in Bangalore within the ambit of R. 4 has no applica-

tion to such a case. If the Court thinks that the evidence of those witnesses is necessary, it has no further discretion in the matter, it must order the commission to issue as a matter of course. If the Court in such a case refuses to issue a commission, it will be liable to revision. (*Abdulla, J.*)

173 I.C. 980-10 R.R. 218-1938 O.L.R. 154-1938 W.N. 348-1938 O.A. 240-A.I.R. 1938 Oudh 103

and effect of—Absence of—Consent of parties, if can file

In the case of consent of the parties, it would not be necessary that the conditions and limitations prescribed in R. 1 of O. 26 should exist. It will appear from R. 8 of O. 26, that with the consent of the parties, the evidence of a person in cases where the conditions and limitations prescribed in R. 1 of O. 26 should exist, it will not be necessary.

173 I.C. 980-10 R.R. 218-1938 O.L.R. 154-1938 W.N. 348-1938 O.A. 240-A.I.R. 1938 Oudh 103

—O. 23, R. 3 and Sch. II, Para. 20—Power to adjust disputes by compromise—If affected by para. 20, Sch. II, C.P. Code.

The Court has power under C. P. Code, O. 23, R. 3 to record and pass a decree in terms thereof.

this agreement which the Court has power under C. P. Code, O. 23, R. 3 to record and pass a decree in terms thereof.

In Consent of party, if necessary

C. P. CODE (1908), O. 26, R. 9.

Where the witness who is examined on commission, is beyond the jurisdiction of the Court, the consent of the party is not necessary to make it admissible as to a party object, it is of no use. (Bos v. KUNJILAL.

A.I.R.

O. 26, R. 11 and S. 99—Issue of commission—Notice to parties—Rules as to—Failure to give notice—Effect.

O. 26, R. 11 does not provide for the presence of the parties when a commission is issued and merely leaves

Court to issue successive commissions—Previous Commissioner's report—If to be wiped out and treated as not evidence before sending out another commission.

It is in the power of the trial Court, when it is satisfied with the report of the first Commissioner

at the or no is not necessary that before issuing a second or third commission, the Court should wipe the previous Commissioner's report off the record, and treat it as not being evidence at all. There is nothing in O. 26, R. 10, C. P. Code, to justify such a contention. (Courtney Terrill, C.J. and Manohar Lal, J.) SHIB CHARAN SAHU v. SARDA PRASAD. 172 I.C. 751—4 B.E. 164—10 B.P. 311—18 Pat L.T. 837—1937 P.W.N. 862—A.I.R. 1937 Pat. 670.

O. 26, R. 15—Commissioner's costs—Order for—If can be made part of decree.

The commissioner is not a party to the suit and an

because a sum sufficient to cover the commissioner's expenses ought to be deposited in the Court before the commission is taken. (Mostly and Dunkley, J.J.) OUN CHAN v. KHOO ZUN. 177 I.C. 501—11 B.E. 134—A.I.R. 1938 Rang 254.

O. 26, R. 16 and 17—Scope of—Examination of witnesses, secretly and in the absence of parties—If permissible.

C. P. CODE (1908), O. 30, R. 6.

O. 30—Applicability—Joint Hindu family firm. There is no rule of law which lays down that a suit

regulated by the Contract Act. Such a firm must sue and be sued in the name of its members. (Tek Chand, J.) DEBI SAHAI v. GILLU MALL. 40 P.L.R. 456—177 I.C. 918—A.I.R. 1938 Lah 563

O. 30, R. 1—Applicability to business of joint

Effect of.

When a suit is brought against a firm and judgment

PAL. 42 C.W.N. 310—177 I.C. 812—11 B.E. 277—A.I.R. 1938 Cal. 316.

O. 30, R. 1—Suit against firm—Addition of names of partners—If obligatory.

In cases of suits by or against firms properly represented, the addition of the names of individual partners is not obligatory and the suit can proceed even in the absence of the partner's names. (Din Mohammad, J.) CHANDU LAL v. SARASWATI SUGAR SYNDICATE. A.I.R. 1938 Lah. 823.

O. 30, R. 3, Proviso—Suit against firm—Plaintiff having notice of dissolution—Decree obtained after service on one partner only—Validity and effect.

A decree obtained against a firm after service of

him personally. (Ameer Ali, J.) SATYA CHARAN v. CALCUTTA HARDWARE ENGINEERING CO. 42 C.W.N. 820.

O. 30, R. 4—Scope—Surviving partner of firm—Suit by—Non-joinder of legal representatives of deceased partners—If fatal—Dismissal of suit—Propriety.

The surviving partner of a firm is entitled to maintain a suit under O. 30, R. 4, C. P. Code, without joining as

to be defended.

an ordinary suit against the firm, each partner has to come in and defend. He has an individual right to come in and defend although he defends on behalf of the firm. Each partner may file separate suits, one partner may defend, while another admits. Although not clearly stated this is involved in O. 30,

C. P. CODE (1908), O. 30, R. 6.

R. 6. C.P. Code. (*Ameer Ali, J.*) SATYA CHARAN v. CALCUTTA HARDWARE ENGINEERING CO.

42 C.W.N. 820

—O 30, R. 6—*Warrant of Attorney by one partner for appearance—Appearance as on behalf of firm.*

Under O. 30, R. 6, C. P. Code, after appearance all steps in the suit must be in the name of the firm. Though the appearance in such circumstances is individual by each partner, that appearance is an appearance on behalf of the firm. Hence, attorney is given by one partner on behalf of the firm. (Lord J.J.) GHISULAL GANESHILAL.

—O 32, R. 1—Suit on behalf of minor.

Plaintiff found to be minor—Procs.

See C. P. CODE, § 47 AND O 32

1938 O A 61

—O 32, R. 3—Appointment of guardian ad litem—Effect—Allegations that minors were in fact majors—Onus

Where a suit is instituted against certain persons on the footing that they were minors the Court, by appoint-

CHETTYAR FIRM v. MG. SHWE HINUN.

A.I.R. 1938 Rang 468.

—O 32, R. 3—Duty of Court—Minors served through mothers as guardians—No express order of appointment or consent of guardians—Presumed guardians not appearing in proceedings—Direct against minors—If null and void.

Where the defendant in a suit is a minor that Court has to see not merely that a guardian is appointed, but also that the guardian has consented to act. Where notices are served on minor defendants through their

—O 32, R. 3—Guardian ad litem—Absence of formal order appointing him—Validity of proceedings

Where a person acts as the *de facto* guardian ad litem of a minor defendant, the mere absence of an order formally appointing him as guardian ad litem is

litem

of the

O. P. CODE (1908), O. 32, R. 7.

that they were not properly represented in the suit. (*Dunkley and Braund, J.J.*) K. M. A. R. M. CHETTYAR FIRM v. MG. SHWE HINUN.

A.I.R. 1938 Rang 468.

—O 32, R. 4(1)—“Adverse to that of the minor”—Mortgage by Hindu father—Suit on impleading minor son—Father appointed guardian ad litem—Propriety—Father's interests—If adverse to those of minor son.

5 B.R. 37—11 H.P. 191—A.I.R. 1938 Pat 437.

—O 32, R. 5—Representation of minor—Appointment of guardian ad litem—Mother, if can act there after.

the guardian ad litem it is not entertainable. (*Bennet and Verma, J.J.*) HEM RAJ v. KHENCHAND

I.L.R. (1938) All 829—1938 A.L.R. 855=

178 I.O. 419=1938 A.W.R. (H.O.) 657=

1938 A.L.J. 919=A.I.R. 1938 All. 601.

—O 32, R. 5—Scope—If mandatory—Order at instance of minor without next friend or guardian but beneficial to minor—Court—If bound to set aside

O 32, R. 5, C. P. Code was made for the benefit and protection of a minor and not for his prejudice.

Quere.—Whether R. 5 of O 32 compels the Court

S. 36, U.P. Land Revenue Act

The provisions of O 32, R. 7, C. P. Code, must presumably be held to apply to proceedings under S. 36 of the U.P. Land Revenue Act in view of S. 264 of the Agra Tenancy Act (*Hennet, J.*) SUCHIT CHAURE v.

1181=1937 A.L.J. 1284=

425=1938 A.L.R. 137=

482=A.I.R. 1938 All. 74.

stratum—Reference without

some of the defendants are

avoiding the proceedings is liable to be (Trib. Chand, J.)

40 P.L.R. 49

R. 1938 Lah

C. P. CODE (1908), O. 33, R. 5.

SUDAMA KUER. 175 I.C. 505=4 B.E. 598=
10 R.P. 632=19 Pat.L.T. 101=1000 W.W. 100=

—O. 33, R. 5 (b) and (c)—

under—Burden of proof.

Where opposite party opposes the application on any

T. P. Act and Registration Act

(Venkatasubba Rao and Abdur Rahman, J.J.) KAYAMBU
PILLAI v. LAKSHMI AMMANI AMMAL.

178 I.O. 514=1938 M.W.N. 322=47 L.W. 405=
A.I.R. 1938 Mad. 491=(1938) 2 M.L.J. 137.

—O. 33, R. 7—Objection under R. 5—Power of
Court to deal with.

Court has under O. 33, R. 7 power to dismiss the
application either because on the evidence produced it is
not satisfied that the petitioner is a pauper or because

Chak. v. Industrial Bank

10 R. Pesh. 20—A.I.R. 1938 Pesh. 50

—O. 33, R. 9 (c)—Construction—"Plaintiff"—
Meaning—If includes his representative in interest—

Representative—
predecessor-in-interest

The word "pla
places in which

C. P. CODE (1908), O. 34, R. 1.

application is competent and the Government's right to

A.I.R. 1938 Cal. 776.

O. 34, R. 1—Attaching creditor—A plaintiff
party.

Per Nasim Ali, J.—An attaching creditor is a neces-
sary party to a mortgage suit. (S. K. Ghose and Nasim
Ali, J.J.) KARNANI INDUSTRIAL BANK, LTD. v.
BARABANI COAL CONCERN, LTD. 42 W.N. 523=
A.I.R. 1938 Cal. 471.

—O. 34, R. 1—Attaching creditors—Proper but not
necessary parties—Lower Court striking out their names

—Attaching creditors bringing the property to sale and
ers subsequently—Effect—Application

of Court in revision—Right to relief.
ht by the plaintiff on his mortgage,

tioners, who had obtained a money
defendants prior to the date of the

mortgage and attached the mortgaged properties. When
the suit came for trial, the Court directed the names of

the petitioners to be struck out as they were unnecessary
parties and asserted a paramount claim and raised

late of the
petitioners

in execu-
so became

High Court, taking notice of the altered circumstances,
declined to give to the petitioners that relief to which

Government is entitled to obtain such an order by
making an application under O. 33, R. 12. Such an

C. P. CODE (1908), O. 39, R. 1.

(Mya Bu and Mackney, JJ.) MOHAMMAD HAJEE v. VEDNATH SINGH 174 I C. 503 = 10 R.R. 411 = A.I.R. 1938 Rang. 21.

—O. 39, R. 1—Suit by unsuccessful claimant under O. 21, R. 63—Temporary injunction restraining execution sale—Power of Court to grant.

In a suit filed by an unsuccessful claimant under O. 21, R. 63, C. P. Code, the Court has power to grant a temporary injunction under O. 39, R. 1, C. P. Code, restraining the decree holder from selling the property, which is the subject matter of the suit, in execution of his decree. The principle underlying O. 39, R. 1 is to prevent multiplicity of judicial proceedings, and in each case the Court will have to consider whether there is a danger of the property being sold in the execution of the decree.

claim case is a frivolous one or not, is an order of the Court. (*Bartley and Nasim Ali, JJ.*) BHAKAT V. HEERALAL AGARWALLA & 42 C.W.N. 409 = A.I.R.

—O. 39, R. 1—Temporary injunctions in contravention of—If a nullity

A temporary injunction under the provisions of O. 39 is not a stay order issued by a Court authorizing such an order. The compliance with an injunction issued under O. 39 is to make the offender liable to the punishment prescribed in C. P. Code. Injunctions issued by a Court, as is provided in C. P. Code, are not nullities as they are not in contravention of any law. (*Chand v. Duttan Ram, JJ.*) 30 A.L.R. 518 = A.I.R. 1938 Lah. 220

—O. 39, R. 1—Temporary injunction—When may be granted.

The power of a Court is very wide with respect to the issue of a temporary injunction and the injunction can be granted if the Court is satisfied that there is a danger of the property being sold in the execution of the decree.

There is no restriction in O. 39, R. 1 that should be for the issue of a perpetual injunction. A temporary injunction is to be granted. (*Ali, J.*) MT TAJBANO v. CHANDAN SINGH

—O. 39, R.

Meaning of—So entitled to execute same—Injunction to restrain—If can issue.

C. P. CODE (1908), O. 40, R. 1.

as amended in 1937), Provision—If adds to the law under Specific Relief Act, S. 56 (b).

1938 P.W.N. 220.

Applicability—Application for leave to sue—Application for appointment of commissioner to take inventory—Maintainability.

An application for leave to institute a suit in forma pauperis is a suit for purposes of O. 39, R. 7, C. P. Code, and the parties in a contemplated pauper suit who have petitioned to have their suit admitted under O. 33, C. P. Code, are therefore entitled to the relief of appointment of a commissioner or receiver for the purpose of taking an inventory of properties. (*Gentle, J.*) CHIDAMRARAM V. NATARAJA MUDALIAR 48 L.W. 688 = 1938 M.W.N. 1254.

—O. 39, R. 9—Possession given under—Nature and effect of—If conclusive in proceedings in Criminal Court. See CR. P. CODE, SS. 107 AND 145.

1938 P.W.N. 526.

—O. 40 R. 1 and O. 43 R. 1 (B)—Appeal—Appointing receiver—Form—Proper

as the appointment

—O. 40 R. 1—Appeal—Appointed receiver refusing to act—Appeal against appointment—If lies. See C. P. CODE, O. 43, R. 1, CL. (5) A.I.R. 1938 Lah. 10.

—O. 40, R. 1 and O. 43, R. 1 (5)—Appeal—Order dismissing application for removal of receiver—If appealable

In view of S. 16 of the Burma General Clauses Act, O. 40 R. 1 must be read as amended.

—O. 40, R. 1 and O. 43, R. 1—Appeal—Order of appeal is given by O. 43, R. 1, orders passed under O. 40, R. 1, (*J.J.*) ABDUL KADER V. R. M. 1938 Rang L.E. 586 = A.I.R. 1938 Rang. 387.

—O. 40, R. 1, 4—Applicability—Accounts by third

C. P. CODE (1908), O. 40, R. 1.

—O. 40, R. 1—*Construction—Just and convenient*
The words 'just and convenient' in O. 40, R. 1, construed according to the ordinary rules do not require the appointment of a receiver to property over which the plaintiff has a lien. Receiver can be appointed if the appointment is in fact just and convenient. (*Stemp, J.*)
HARI KAM v. FIRM MADDU MAL.

177 I.C. 612 = 11 B.L. 338 = A.I.R. 1938 Lah. 12.

—O. 40, R. 1—*English mortgage—Receiver, if can be appointed in execution.*

In the case of English mortgages, a receiver can be appointed of the mortgaged property in execution in cases where sub R. (2) of O. 40, R. 1, C. P. Code, would operate to prevent such an appointment. (*Panchridge, J.*) SM. RENULA BOSE, *In re.*

175 I.C. 908 = 11 B.C. 11 = 42 C.W.N. 266 = A.I.R. 1938 Cal. 93

—O. 40, R. 1—*Grounds for appointment of receiver—Prima facie case—Defendants in possession—Absence of even allegation as to waste*

The power conferred by O. 40, R. 1, C. P. Code should be exercised cautiously and only in cases where

C. P. CODE (1908), O. 40, R. 1.

receiver in execution of point to some actual and not merely to a ground. It cannot be supposed that when a substantial portion of the mortgage securities is outside the local limits of the jurisdiction of the Original Side, the mortgagee can almost as of right be appointed receiver in execution who are slow to succumb. BOSE, *In re.*

—O. 40, R. 1—*Mortgage suit—Simple mortgage—Suit for sale—Receiver, if can be appointed.*

Under O. 40, R. 1 a receiver cannot be appointed in a suit for sale on a simple mortgage before a preliminary decree has been passed. (*Weston, J.*) NANDA v. KANHAIYA LAL. 1938 A.M.L.J. 90.

—O. 40, R. 1 and 2 and S. 11—*Mortgage suit—Simple mortgage—Whether receiver could be appointed—Original order of Court allowing mortgagor to be in a*

1938 O.W.N. 1153 = 1938 O.A. 938.

—O. 40, R. 1—*Property—Receiver*

—C. P. Code, S. 17

The Court cannot appoint a receiver in execution of a decree in respect of the property in question is dedicated property, being wakf property, which under the terms of the wakf deed has to be managed by a trustee enjoined to perform certain religious duties as trustee, it would not be just and convenient to appoint a receiver of such property. No receiver of such property can therefore be appointed in execution of a simple money decree, as the property

that the appointment of a receiver in a simple mortgage suit was wrong.

(1938, 1939).

Held further, that the Courts allowing by its original order the mortgagor to be in possession of the property could not be barring the later order to vacate by any principle of constructive *res judicata*. The Court certainly did not decide any question against the mortgagee either expressly or by implication which would amount

—O. 40, R. 1—*Mortgage suit—Suit on simple mortgage—Appointment of Receiver.*

It is settled law that in the case of a simple mortgage without possession the intention of the parties is that

—O. 40, R. 1—*Mortgage decree—Appointment of receiver in execution of decree*

The Court cannot make the difficulty mortgagee

C. P. CODE (1908), O. 40, R. 1.

suit. (*Skemp, J.*) MANOHAR LAL v. KISHAN LAL
176 I.C. 919=11 B.L. 249=
A.I.R. 1938 Lah. 10

—O. 40, R. 1—Partition suit—Receiver—Appointment of—Justification

In a suit by a minor for partition of the family properties, it was found that he was entitled to a half share in the properties, that the quarrels in the family and the conduct of the defendant made it impossible for the plaintiff to get his fair share of the harvest and it also appeared that so long as the properties remained with the defendant the plaintiff would not be able to secure his fair share of the income. The lower Court

The proper remedy of the lessee for breach of contract of lease entered into by the Receiver is only against the Receiver personally and the lessee has no right of suit against the owner of the estate. The receiver is not to be indemnified from the estate if it action in leasing the property was correct.
REV. BROTHER PATRICK v. LYAN H
1938 Kung. Ind. U.L.

—O. 40, R. 1—Receiver—Appointment—Effect—Property in possession of receiver—Suit of—Sanction of Court—Necessity.

Where an estate is in the possession of a receiver appointed by Court, a suit for possession from that receiver can only be brought with the sanction of the Court. It is necessary for the plaintiff to apply to the Court which has appointed the receiver for sanction for

to take possession, or a right to bring an action, or a

—O. 40, R. 1—Receiver—Grounds for appointment—Courts of concurrent jurisdiction—Separate appointments by—Undesirability of.

It is obviously undesirable that a receiver should be appointed by two Courts of concurrent jurisdiction, so that orders may be given possibly by one Court which may conflict with the orders that are given in the other Court. Where there is a receiver already appointed, the proper procedure for protection of one's interest is not to apply to another Court of concurrent jurisdiction for the appointment of another receiver, but to apply in the Court which has already appointed a receiver for adequate protection. (*McNair, J.*) ANANDINATH MUKHERJEE v. SHIECHARAN TRIGUNAIT.
42 O.W.N. 33.

C. P. CODE (1908), O. 41, R. 1.

—O. 40, R. 1—Receiver—Position of—If legal representative of party—Estate including decree to be executed—Execution—Procedure for execution of decree by receiver.

Receivers appointed by the Court are officers of the Court, and are not the legal representatives or assigns of the parties to the suit; nor is it the practice of the Court to bring receivers on the record in a suit and subject them to liability as to costs. Where an estate of which a receiver has been appointed includes a decree to be executed, the proper procedure is for the receiver to apply in the suit in which he was appointed (unless it already has the power) for liberty either to file a fresh darkhast in his own name for execution or to continue the existing darkhast (when one has been filed and is pending) in the name of the darkhastdar on giving him a proper indemnity as to costs. (*Beaumont, C.J. and Waddell, J.*) HANMANT v. JAINAPUR.
178 I.C. 395=40 Bom L.R. 932=
A.I.R. 1938 Bom 458

1 (2)—Removal of receiver—Dismissal of property struck off—If entitled receiver.

Where two sets of defendants are joined in a suit on a mortgage and the mortgagee gets a receiver appointed to take charge of certain land covered by the mortgage, but subsequently one set of defendants are struck off

order prayed for, if it is found that they were in possession of the land at the time the receiver was appointed

205—Receiver's fees—Powers of Court.

Official Receiver, in making his lists, should consider

—O. 41, R. 1—Appeal filed with copy of original

judgment is the original have been it is doubtful from the extent, and even a correction of a mistake under S. 152, C. P. Code, in the decree, have the effect of superseding the original decree so as to necessitate the dismissal of an appeal, which is presented with a copy of the original decree (*Goldstream and Jai Lal, JJ.*) LOCAL COMMITTEE, GURDWARAS v. SARDUL SINGH.
A.I.R. 1938 Lah. 76

—O. 41, R. 1 and S. 104—Applicability—Order in contentious proceedings under S. 295—Succession Act—Appeal—Production decree—Necessity—Form of decree.

An appeal filed against an order passed in a contentious proceedings is an appeal filed under O. 41, R. 1, and not under S. 104 of the Code. Hence an appeal against an order in a contentious proceeding granting

C. P. CODE (1908), O 41, R. 1.

probate or letters of administration with the will annexed is incompetent without the production of a copy of a

O P. CODE (1908), O. 41, R. 4.

dies and the heirs are not brought on record. Where some only of the plaintiffs appealed impleading a non-

—O. 41, R. 1—Scope—Provisions, if mandatory—Copy of decree not attached—Effect—Attaching of judgment, if optional

The provisions of O 41, R. 1 are mandatory and an omission to attach a copy of decree is fatal to the appeal. As regards judgment it is for the Court to decide whether a copy of judgment may be dispensed with or not and the matter is not optional with the litigant and if the Court does not dispense with it and if a copy of judgment is not filed, the appeal is incompetent. (*Vishan Bose, J.*) CHETANLAL PUKSHOTTAM v. G. S. GUPTA 175 I.C. 33=11 B.N. 22= A.I.R. 1938 Nag 233

—O 41, R. 2, proviso—Power of Court under—Decision of case on points raised by Court suo motu—If satisfied

—O 41, R. 4—Appellate appellants—Abate

The provisions of O 41, R. 4 enable the Court to vary the decree as a whole even though the appeal of one of the appellants might have abated by reason of death. (*Burn, J.*) SAKKARAI CHETTIAR v. CHELLAPPA CHETTIAR. A.I.R. 1938 Mad. 874.

—O 41, R. 4 and 33—Relief to persons not before Court—Exercise of discretion—Principles Ordinarily when a person submits to a decree it is not

—O 41, R. 4—Applicability—Some appellants appealing—Others impleaded—Common interest—One of the non appealing plaintiffs and a pro forma defendants dying—Legal representative brought on record—Appeal, if can continue as the rest—O 22, R. 4

When a question arises as to the applicability of O 41, R. 4 there is no essential difference between the case where some only of the plaintiffs or defendants

1938 E.D. 312=1938 A.W.R. (H.C.) 138= A.I.R. 1938 All 235.

—O. 41, R. 4—Power of Court—Abatement of appeal—Court's power to vary decree

Provisions of O 41, R. 4 enable the Court to vary the decree as a whole even though the appeal of one of the appellants might have abated by reason of death. (*Burn, J.*) SAKKARAI CHETTIAR v. CHELLAPPA CHETTIAR. A.I.R. 1938 Mad. 874.

—O. 41, R. 4—Powers of Court—Dismissal of suit by two plaintiffs—Appeal by one only—Other impleaded as party but no appeal by latter—Decree in favour of latter also—Power to pass

Where a suit filed by two plaintiffs as reversioners to an estate is dismissed on the ground that they are not the reversioners, and one of them prefers an appeal in

r also as
power to
be appeal-
plaintiff,
dismiss-
appellate
appeal

whole decree, which proceeded on to both the plaintiffs, O. 41, R. 4

10 E.A. 414=1937 A.W.R. 918= 1937 E.D. 548=1937 A.L.J. 1111= A.I.R. 1937 All 796

—O. 41, R. 4 and 33—Relief to persons not before Court—Exercise of discretion—Principles

Ordinarily when a person submits to a decree it is not

Court in doing complete justice. To meet this contingency O 41, R. 4 and 33, C.P. Code, have been

justifying an interference by the Court. (*Sen, J.*) 43 C.W.N. 15.

by some only of

The provisions of O 41, R. 4 simply lay down that one or more plaintiffs may prefer an appeal where a decree proceeds on a ground common to all, but it does not lay down that the others are not necessary parties.

plaintiffs have appealed and have impleaded the other non appealing plaintiffs and the pro forma defendants having the same interest as the plaintiffs and one of the non-appealing plaintiffs or pro forma defendants

C. P. CODE (1908), O. 40, R. 1.

suit. (*Shemp, J.*) MANOHAR LAL v. KISHAN LAL
176 I.C. 919=11 R.L. 249=
A.I.R. 1938 Lah 10

—O. 40, R. 1—Partition suit—Receiver—Appointment of—Justification.

In a suit by a minor for partition of the family properties, it was found that he was entitled to a half share in the properties, that the quarrels in the family and the conduct of the defendant made it impossible for the plaintiff to get his fair share of the harvest and it also appeared that so long as the properties remained with the defendant the plaintiff would not be able to secure his fair share of the income. The lower Court appointed a receiver to harvest the crops.

Held, that the circumstances of the case justified the

C

The proper remedy of the lessee sui breach of contract of lease entered into by the Receiver is only against the

—O. 40, R. 1—Receiver—Appointment—Effect—Property in possession of receiver—Suit of—Sanction of Court—Necessity.

Where an estate is in the possession of a receiver appointed by Court, a suit for possession from that receiver can only be brought with Court. It is necessary for the plaintiff to apply to the

—O. 40, R. 1—Receiver—Appointment—Courts of concurrent

in the other appointed, the proper procedure for protection of one's interest is not to apply to another Court of concurrent jurisdiction for the appointment of another receiver, but to apply to the Court which has already appointed a receiver for adequate protection. (*M.Nair, J.*) ANANDINATH MUKHERJEE v. SHIBCHARAN TRIGUNAIT.

42 O.W.N. 33

C. P. CODE (1908), O. 41, R. 1.

—O. 40, R. 1—Receiver—Position of—If legal representative of party—Estate including decree to be executed—Execution—Procedure for execution of decree by receiver.

Receivers appointed by the Court are officers of the Court, and are not the legal representatives or assigns of the parties to the suit; nor is it the practice of the Court to bring receivers on the record in a suit and subject them to liability as to costs. Where an estate of which a receiver has been appointed includes a decree to be executed, the proper procedure is for the receiver to apply in the suit in which he was appointed (unless it already has the power) for liberty either to file a fresh darkhast in his own name for execution or to continue the existing darkhast (when one has been filed and is pending) in the name of the darkhastdar on giving him a proper indemnity as to costs (*Beaumont, C.J. and Wasoodew, J.*) HANMANT v. JAINAPUR

178 I.C. 395=40 Bom L.R. 932=

A.I.R. 1938 Bom 458.

of receiver—Defence off—If omitted

joined in a suit on a mortgage and the mortgagee gets a receiver appointed to take charge of certain land covered by the mortgage,

along of the land at the time the receiver was appointed

205—Receiver's fees—Powers of Court.

of original

A.I.R. 1938 Lah 10
—O. 41, R. 1 and S. 104—Applicability—Order in contentious proceedings under S. 295—Succession Act—Appeal—Production decree—Necessity—Form of decree.

An appeal filed against an order passed in a contentious proceedings is an appeal filed under O. 41, R. 1, and not under S. 104 of the Code. Hence an appeal against an order in a contentious proceeding granting

C. P. CODE (1908), § 41, R. 1.

probate or letters of administration with the will annexed is incompetent without the production of a copy of a

C. P. CODE (1908), O. 41, R. 4.

dies and the heirs are not brought on record. Where some only of the plaintiffs appeared impleading a non-

ment, if optional.

The provisions of O. 41, R. 1 are mandatory and an omission to attach a copy of decree is fatal to the appeal. As regards judgment it is for the Court to decide whether a copy of judgment may be dispensed with or not and the matter is not optional with the litigant and if the Court does not dispense with it, a copy of judgment is not sent. (*Pitran Bose, J.*) C v. G.S. GUPTA.

§ 41, R. 2. proviso

Decision of case on point raised by Court suo motu—

O. 41, R. 4—Power of Court—Abatement of appeal—Court's power to vary decree.

Provisions of O. 41, R. 4 enable the Court to vary the decree as a whole even though the appeal of one of the appellants might have abated by reason of death. (*Unruh, J.*) SAKKARAI CHETTIAR v. CHELLAPPA

1938 Mad 374.

Dismissal of only—Other impleader—Decree in

as reversioners

he appellant, plaintiff, dismissed appellate

§ 41, R. 4, C P. Code. The appeal whole decree, which proceeded on to both the plaintiffs, O 41, R 4

applies to the case with full force and the appellate Court is fully entitled to pass a decree in favour of both

§ 41, R. 4 is based on two considerations—the appellate Court full power to do as it thinks fit before it or not, and, even contradictory decisions in the suit. (*Ganga Nath, J.*) JAODEI

172 I C. 635=1938 A.L.R. 8=

10 R.A. 414=1937 A.W.R. 916=

1937 R.D. 548=1937 A.L.J. 1111=

A.T.R. 1937 All 798

decree A decree was passed and the defendants appealed. During the pendency of the appeal one of the

proved, the decree passed was common to all.

(*East All, J.*)

O. 4

plaintiffs

interest—One of the non-applying plaintiffs and a pro forma defendant dying—Legal representatives not brought on record—Appeal, if can continue as against the rest—O 22, R. 4.

When a question arises as to the applicability of O 41, R. 4 there is no essential difference between (1) a case where some only of the plaintiffs or defendants, as

agency O 41, R. 4 and 33, C. P. Code, have been enacted. These provisions give the Court a wide discretion to grant relief to persons who are not before the Court either as Appellants or Respondents. These discretionary powers, however, should be cautiously used and the exercise of these powers, when it is not necessary, would constitute an error of law and procedure. (*Sen, J.*)

43 C.W.N. 15.

by some only of

lay down that appeal where all, but it does necessary parties,

C. P. CODE (1908), O. 41, R. 5.

Where the suit is one for declaration in respect of the partition of joint property, all plaintiffs' co-sharers are necessary parties to an appeal against the decision of such a suit.

appeal is a necessary part of the suit. *(S. K. Ghose and Patterson, J.J.) BIBHABATI DEBI v. RAMENDRA NARAYAN ROY* 40 P.L.R. 6

—O. 41, R. 5—Order under refusing to stay execution pending appeal—Appealability. See C. P. CODE, S. 2 (2) 40 Bom.L.R. 1198.

—O. 41, R. 6 (1)—Order directing execution to proceed on furnishing of security—Security to the satisfaction of the Registrar—Report by Registrar—

the security cannot come up to the Court again, as it would be in the nature of an appeal, which does not lie. But there is no doubt the Court can review its own order on proper grounds. *(S. K. Ghose and Patterson, J.J.) BIBHABATI DEBI v. RAMENDRA NARAYAN ROY* 68 O.L.J. 269=42 O.W.N. 188.

—O. 41, R. 10—Applicability—Original side

C. P. CODE (1908), O. 41, R. 11.

—O. 41, R. 10—Security for costs—Appellant being a minor and a pauper—If can resist application for security for costs—

creature in the hands of persons well able to find security he can be called on to furnish security for costs. The fact that the appellant is both a minor and a pauper does not by itself entitle him to resist the application for security for costs. *(Venkatasubba Rao and Abdur Rahman, J.J.)*

A.I.R.

sub r. (1). The power of the appellate Court to take these two courses under R. 11 is not taken away when a notice is issued to the respondent and the respondent appears in accordance with that notice. *(Bennet, A.C.J. and Varma, J.) CHIMMAN LAL v. ZAHURUDEIN.*

—O. 41, R. 11—Powers of Court—Summary dismissal of appeal—When justified.

An appellate Court should not dismiss an appeal summarily without any due regard to the nature of the questions of law and fact involved.

of summary specially for the parties careful examination. *(Manohar and Pandar v. B.R. 389= L.T. 305=*

A.I.R. 1938 Pat. 330.

—O. 41, R. 11—Procedure—Case involving elaborate questions of law and fact—Summary dismissal—

and a summary was of a summary character and misconduct has been *ma la fide* throughout. Though a respondent should be prompt in applying for security for costs, yet where the delay was due to the respondent's

C. P. CODE (1908), O. 41, R. 17.

CHOTOO LAL v. MST. BIBI SEKINA.

19 Pat.L.T. 210—

—O. 41 Rr. 17 and 18—*Ap*

ing Court to attend another case a
derable time on date of hearing—
absence and dismissed summarily—

Where on the date fixed for hearing of the appeal, the appellant's Counsel waited in Court from 10 A.M. to 3.20 P.M., and then left to attend a case in another Court, and the Court after finishing the hearing of a previous appeal at 3.50, called the appeal in the absence of the counsel and dismissed it summarily.

Held that in the circumstances, the Court did not exercise a sound judicial discretion in proceeding so

C. P. CODE (1908), O. 41, R. 22,

such persons cannot be deemed to be persons interested

40 P.L.R. 273 = A.I.R. 1938 Lah. 35.

—O. 41, R. 20—*Discretion under—Exercise of—Principles.*

Where the appellants were not able to show any good reason why the omitted parties were not impleaded though they were obviously necessary parties, the Court would refuse to permit them to be impleaded in appeal, in the exercise of its powers under O. 41, R. 20 (*Bhula*, RTAR SINGH v. WARYAM SINGH).

40 P.L.R. 6.

41, R. 20—*Party interested in the result of*

—O. 41, R. 19—*Right to apply*
dismissed for default of appellant—
appellant pending appeal—Locus stand
restoration

O. 41, R. 19, C. P. Code, contempl applicant seeking to have an appeal set to prove that the appeal was his, and al prevented by sufficient cause from appeal was called on for hearing. A p got an assignment of the property in dispute from the appellant after the filing of the appeal has no locus stands to apply under O. 41, R. 19 to restore to file the appeal which has been dismissed for default of the assignor appellant (*Wort, A.C.J. and Manohar Lal, J.*) NARAIN CHANDKA KHAN v. JAGANNATH ACHARYA,
177 I.C. 152 = 4 B.R. 798 =
11 E.P. 134 = 1935 P.W.N. 601 =
A.I.R. 1938 Pat. 574

—O. 41, R. 19—*Applicability—Application for*
restoration of appeal dismissed for non payment of
printing cost. See COURT-FEES ACT, SCH. I, ARTS. 4
AND 5 AND SCH. II, ART. 1 (d)

A.I.R. 1938 Pat. 111 = 19 P.L.T. 17.

—O. 41, R. 20—*Applicability—Omission to im*
plead owing to no fault of party—Power of appellate
Court to add after expiry of period of limitation

Where omission to add a party was not deliberate, but the error was due to the Collector's office in not in-

—O. 41, R. 20—*"Person interested in result of*
appeal"—Person against whom appeal is barred by time.

Where an appeal against a person has become barred by time he ceases to be "a person who is interested in the result of the appeal" within the meaning of O. 41, R. 20 and his name cannot be subsequently added as a respondent under O. 41, R. 20 (*Young, C.J. and Alenroc, J.*) RANESHWAR DAS v. OFFICIAL RECEIVER, DELHI.
I.L.R. 1938 Lah. 398 =
A.I.R. 1938 Lah. 325.

—O. 41, R. 22—*Cross-objections—If can be enter*
tained against a party to the suit, not impleaded as a
party to the appeal—Cross-objections filed against such
party—Effect.

Where the plaintiff claimed relief against both defendant 1 and defendant 2 and the first defendant raised the plea that he was an unnecessary party to the suit but the Court found that there were no merits in his objection, but the first appellate Court held that the first party, and the second at impleading only the

is entitled to file cross-ndant, although he was appeal. By putting in fendant has been imndent = entitled to file

—O. 41, R. 22—*Cross objections filed by deceased*
respondent—His Legal Representatives brought on
record by appellant—If can maintain cross objections.

The cross-objections were filed by the deceased

A per
second.
(Westor

of suit—*Legal representatives brought on record—in*
appeal, legal representatives not impleaded until right of
appeal barred against them—Court, if can implead
them.

C. P. CODE (1908), O. 41. B 22.

PRODYOT KUMAR & RADHAKISHEN

42 O.W.N. 304.

—O. 41, R. 22—Decree for mesne profits by trial Court for certain amount—Appellate Court reducing certain items—Rights of respondent, without memorandum of cross objections, to support decree of trial Court by showing that other items of profits may be assessed at higher figure.

When an item in an account appearing in the decision of the lower Court is reduced by the appeal success the respondent without filing any memorandum of objection can support the said decree by showing the lower Court had wrongly decided against him.

constituent elements without filing memoranda of cross-objections. He is entitled to urge that if interest be reduced by the appellate Court, the tax assessed at a higher figure, if the evidence provided that the total does not exceed decreed as mesne profits by the lower court. (*R.C. Shitler and Strawn, J.F. NARAYAN RAY & BHAIKABENDRA NARAYAN*)

—O. 41, B. 22 (4)—Scope—Appeal—Cross-objec-
tion by respondent—
C. P. Code, S. 10

—O. 41, B. 22 (4)—Scope of—Abatement of appeal—Cross objection—Effect on.

Cross objection is part of an appeal and when an appeal goes out for any extraneous reasons as abatement, it follows that the cross objection should ordinarily go out with it.

In O. 41, R. 1, *Clark, J.*

—O. 41, E. 25—Power of Court—Issue on point not pleaded—If can be remitted—Right of party to allege or prove facts not in accord . . . facts.

An appellate Court cannot remit at
tance of a party upon a point which
by him, a party cannot be allowed
he is prepared to allege or prove
necessary, even if the allegations are not in accordance
with the real facts. (*Niamatullah, Ag. C.J. and
Allip, J.*) GAYA DREN MISIR v. TIRHUWAN
SINGH. 1937 A W R 1183-1937 A I J. 1252

—O. 41. B. 27—*Additional evidence—Admissibility*

C. P. CODE (1908). O. 41. R. 27.

is heard a party applies to adduce fresh evidence but when on examining the evidence as it stands some inherent lacuna or defect becomes apparent. It may well be that the defect may be pointed out by a party or that a party may move the Court to supply the defect but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands. Consequently it is not open to the appellate Court to admit additional or 'new' evidence before the appeal is heard.

—O. 41, Ex. 27 and 29—Additional evidence—
Admission of evidence—Irregularity

Judge against the
the appellants filed
C. P. Code, for ad
ditional evidence, a
review application on the basis of these documents was
dismissed by the Court.

definite reason for admitting the evidence except the
the interests of justice, and no opportunity,
to the opposite side to adduce rebutting evi-

....., that the procedure adopted by the District Judge is irregular and must obviously have prejudiced the other party and his order in the appeal should be set aside. The formula 'in the interests of justice' may mean everything or may mean very little. The word 'requires' in O 41 R 27 (1) (b) means 'ends it need-
f. SRINIVASAN PILLAI v.
1938 M.W.N. 1147-
787-A.J.B. 1938 Mad 372-
(1938) 1 M.L.J. 50.

—O. 41, B. 27—Additional evidence in appeal—

"...rise of the discre-
it whenever, before
adduce fresh evi-
dence as it stands
on apparent. (58
L.A. 207, 208) (*Ward v. Sarnu*)
MAL. 177 IC 305-11 EL 291-

—O. 41, B. 27—Additional evidence—Opportunity to rebut.

C. P. CODE (1908), O. 41, R. 27.

removed, the re-registered document can be admitted in evidence on second appeal. (*Dan Mohamud, J.*)

C. P. CODE (1908), O. 41, R. 27.

—O. 41, R. 27(1)(b)—Additional evidence—Admission by the Court with the consent of parties—Record of the Court not adequate—Effect of order—Duty of stippling of party consenting to admission of

by consent of parties the appellate Court additional evidence, and the reasons given by

did not strictly comply with the terms of O. 41, R. 27 of the C. P. Code.

Where a plaintiff refused to comply with the order

tion to appoint a C. receive additional ev

in the evidence on under O. 41, R. 27 ought to be very sparingly used.

(*Zia-ul-Haque*)
GOPAL

a large extent cover the defects in the record of the

7 M.L.J. 347=34 I.A. 115=

10 M.L.J. 435=36 I.A. 221

on. Even if the reasons

deemed inadequate, the con-

sent of the party to the admission of further evidence

isibility of that

I.C. 226, Not

GROUNDAN v.

48 L.W. 546=

2 M.L.J. 740.

of fresh evi-

—O. 41 R. 27—Scope—New evidence admitted and

its judgment cannot be upheld in second appeal and the Court sitting in second appeal will not take into consideration the new case. (*Davis I.C. and Akhtar I.*)

The test laid down in Cl. (d) of O. 41, R. 27, viz., 'if the Appellate Court requires any document to be pro-

second appeal.

O. 41, R. 27(1) does not forbid the produce additional evidence but states that the parties entitled to produce it, although the Court ma,

for judgment they were produced but the Court refused to accept them then and dismissed the suit. The

the evidence.

Held, that the reference made by the Court and the

40 F. & L. 440=A.I.R. 1938 Lah 181.

—O. 41, R. 27 (b)—Powers of Court—Additional

additional evidence as it considers fit. (*Imam, J.*)

1 R.A. 40=

II O. 294=

38 All. 353

—O. 41, R. 27 (1) (b)—Scope of power under—Remand for insufficiency of evidence to prove the case—If justified

O. 41, R. 27 (1) (b) C.P. Code

though not evidence *de jure*. The documents that were so dealt with could therefore hardly be said to be "new evidence". The irregular reference to them in the trial

C. P. CODE (1908), O. 41, R. 29.

—O. 41, R. 29—Object.

The rule in O. 41, R. 29 serves a very useful purpose namely that it ensures that the appellate Court will consider exactly on what points there is a lacuna which

SRINIVASAN PILLAI v ALAGAPPA CHETTIAR.

1938 M W N 1117 = 48 L W. 797 =

A.I.R. 1938 Mad. 372 = (1938) 1 M.L.J. 50.

—O. 41, R. 31, Ss. 99 and 108—Judge after giving judgment going on leave without signing it—Irregularity—If curable.

Rule 31 of O. 41 does not say that if its requirements are not complied with, the judgment shall be a nullity. So starting a result would need clear and precise words. Indeed, the rule does not even state any definite time in which it is to be fulfilled. The time is left to be defined by what is reasonable. The rule from its very nature is not intended to affect the rights of parties to a judgment. It is intended to secure certainty in the ascertainment of what the judgment was. It is a rule which Judges are required to comply with for that object. No doubt in practice Judges do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court must have inherent jurisdiction to supply such a defect. The case of a

C. P. CODE (1908), O. 43, R. 1.

order as the case may require and even in favour of any respondent who may not have appealed. Even otherwise under S. 151, C. P. Code, the inherent powers of the Court to make such orders as may be necessary

The Appellate Court and brought stream and Din JAIN MANDIR

PANCHAITI.

I L R. 1938 Lah. 148 =

40 P.L.R. 640 = A.I.R. 1938 Lah. 188.

—O. 41, R. 33—Power of appellate Court—Interference in favour of a party not appealing—Conditions.

O. 41, R. 33 has been enacted to empower the appellate Court to do complete justice between the parties. The appellate Court has power under this rule to vary the decree of the lower Court although the variation may benefit a party who has not appealed, for example, where such party has not been able to find the money for preferential claims. It is undoubted that the Court has power to do so. *Rahman, J.* SAMBHA.

—O. 41, R. 33—Powers of Court—Power to deal with case of non-appealing party.

It is within the power of an appellate Court to deal with so much of the decree under appeal as affects against the decree by 41, R. 33, C. P. Code. *Jain, J.* SARAT 1938 P.W.N. 523. Defendant exonerated himself as against such

under O. 41, R. 33, C. P. Code, are sufficiently wide to enable it to grant a relief to a plaintiff against a defendant though as against him the plaintiff has not appealed. (*Wart and Varma, J.J.*) KESHWAR SAHU & GUNI SINGH

17 Pat. 338 = 176 I.C. 289 = 4 B.R. 694 =

11 B.P. 75 = 19 Pat. L.T. 198 =

1938 P.W.N. 211 = A.I.R. 1938 Pat. 275.

—O. 41, R. 33 and 4—Relief to persons not parties to the appeal—Principles. See 4 AND 33 43 O.W.N. 15.

scope of—Decree in favour of non-appealing plaintiff and against non-appearing defendant—Powers of Court.

Where in an appeal by certain defendants, the plaintiff and one of the defendants were made respondents and the defendant respondent did not appear, the appellate Court passed a decree in favour of the respondent plaintiff and against the respondent defendant, it was held that under O. 41, R. 33 the Court had ample powers to pass such orders. (*Varma, J.*) ETWARI MAHTO & GANGA MAHTO 174 I.O. 452 = 4 B.R. 419 = 10 B.P. 520 = A.I.R. 1938 Pat. 323.

—O. 43, R. 1—Order rejecting memorandum of appeal for non-compliance with O. 41, R. 1—Appellability. See C. P. CODE S 2 (2) 17 Pat. 215.

—O. 43, R. 1—Scope—Order rejecting memorandum of appeal for insufficient Court-fee—Appeal. See C. P. CODE S 2 (2) (1938) N.L.J. 1 (F.B.).

—O. 43, R. 1—Scope—Order returning plaint on ground of pecuniary jurisdiction—Appeal. See A.I.R. 1938 Sind 124.

—O. 43, R. 1 (a)—Plaint filed in Court to which directed—Right to appeal—If lost.

—O. 41, R. 31 and O. 20, R. 4 (2)—Judgment of the appellate Court—Contents

It is not a sufficient judgment within the C. P. Code to state that the Judge is in agreement with the finding of the Court below. He is bound to express his reasons for the finding at which he arrives, and, although he need not, so far as the questions of fact are concerned, deal in detail with the evidence adduced at by him in or the Court. (*Wart*) PRAKASH DAS

173 I.C. 473 = 4 B.R. 293 = 10 B.P. 415 =

1937 P.W.N. 821 = 19 Pat. L.T. 362 =

A.I.R. 1938 Pat. 69

—O. 41, R. 32 and 33—Scope—Deficiency in court fee on plaint—Order for payment by trial Court within fixed time—Appeal—Power of appellate Court to extend such time. See C. P. CODE Ss 2 (2) AND 148.

1937 A.L.J. 1316 = 1938 A.W.R. 13 (H.O.)

—O. 41, R. 33—Power to amend decree—Judgment imposing personal liability for costs on mortgagor—Decree drawn up in usual form and making no mention of such liability.

Where the judgment imposes personal liability for costs on the defendant mortgagor in express terms, but the decree is drawn up in the usual form and nowhere imposes any personal liability on the mortgagor for costs, what is executed is the decree and not the judgment, and unless the decree is brought into conformity with the judgment, it will not be permissible to the decree holder to realize the costs in suit personally from the mortgagor. O. 41, R. 33, invests an Appellate Court with plenary powers and authorizes the Court to pass any decree or

C. P. CODE (1950), O. 43, R. 1

A plaintiff is not precluded from prosecuting his appeal against the order returning his plaint for presentation to proper Court, if in compliance with that order he presents the plaint to another Court in order to save limitation in case his appeal is dismissed (*Bhude, J.*)
NANU MAL v. SHIBBA MAL NAND KISHORE.
 40 P.L.R. 975

—O. 43, R. 1 (b)—Application to add party—
Order on—Appeal.

—O. 43, R. 1 (j)—Scope—Application to set aside sale under O. 21, R. 80—Refusal to accept security instead of deposit—Propriety—Dismissal of application to set aside sale—Appeal from both orders—Competency. See C. P. CODE, O. 21, R. 90 (1) (PATNA ANEND MENT), PROVISO (1) (b). 17 Pat 107

—O. 43, R. 1 (k)—Scope—Suits—If includes appeal—Order refusing to set aside abatement of appeal—Applicability—O. 22, R. 11—Application of.

An order refusing to set aside an abatement of an appeal is appealable under O. 43, R. 1 (k), C. P. Code, the word "suits," in the rule also covers an appeal. O. 43, R. 1 (k) has to be read with reference to O. 22 R. 11, which applies to R. 9 of O. 22. (*Wart and Varma, J.J.*) **WAJID ALI v. FAGOO MANDAL**
 17 Pat. 84—174 I.C. 40—4 B.E. 379—10 R.P. 471—
 18 Pat. L.T. 1014—A.I.R. 1938 Pat. 125.

—O. 43, R. 1 (m)—Order recording compromise—
Appeal—If competent after decree

An appeal from an order recording a compromise is not incompetent merely because it was preferred after a decree had been made. It is not necessary to prefer an appeal both from the order and decree passed in pursuance of the order 141 I.C. 732, Rel. on. (*Din Mahomed, J.*) **JARNAIL SINGH v. NARAIN KAUR.**
 40 P.L.R. 661—A.I.R.

—O. 43, R. 1 (m)—Time for
Minor party—Court refusing co.
be preferred at once

Where there has been a compromise, if the compromise is without waiting for remedy under O. 43, R. 1 (m) would become time-barred. (*Dar sug, S.M. an*)
v. KHEDU SINGH.

—O. 43, R. 1 (m) s
recording compromise and
Filing of copy of such order—Sufficiency.

Where a Court passes one consolidated order recording a compromise and granting a decree in terms thereof, an appeal lies from the order recording the compromise under the provisions of O. 43, R. 1 (m) C. P. Code. If

C. P. CODE (1908), O. 45, R. 7.

—O. 43, R. 1 (s)—Order appointing receiver, when appealable. See C. P. CODE, O. 40, R. 1 AND O. 43, R. 1 (s). 174 I.C. 148.

—O. 43, R. 1 (s)—Order that receiver should be appointed—Appeal, if allowed.

There can be no question that the order from which an appeal is allowed by the law is not one by which it is ordered that a receiver should be appointed but the order by which some person or persons are appointed
Those, J.J.
 DASI,
 O.L.J. 107,
 a receiver to
 r—If let,
 fuses to act,

an appeal on the point whether a receiver should or should not be appointed can be entertained. (*Shemp, J.*)
MANOHAR LAL v. KISHAN LAL

176 I.O. 919—11 R.L. 249—
 A.I.R. 1938 Lah. 10.

—O. 44, R. 1 and O. 33, R. 1—Person—If includes limited company.

The word 'person' in O. 33 R. 1 and so the word 'person' in O. 44, R. 1, C. P. Code, does not include a limited company incorporated under the Indian Companies Act. Consequently, an application by a limited company for leave to appeal in *forma pauperis* under the provisions of O. 44, R. 1, is not competent.

Per *Costello J.*—It is doubtful whether it is even right to say that the word 'person' includes a liquidator of a limited company in liquidation (*Costello and Biswas, J.J.*) **BHARAT ABHYUDHOY COTTON MILLS, LTD v. KAMESHWAR SINGH.**
 42 O.W.N. 1164—
 A.I.R. 1938 Cal. 745.

—O. 44, R. 1 and 2—Application to appeal as pauper—Duty of Court—Procedure—Ex parte order admitting application—Respondent's right to question its propriety

The correct procedure on the presentation of an application for leave to appeal as a pauper is, if the

appeal in *forma pauperis* is admitted in the absence of

1938 Rang. L.R. 651.

—O. 45, R. 4—Consolidation of appeals—Power of High Court—R. 7 of Schedule to Rules of Indian Order in Council.

R. 7 of the Schedule to the Rules of the Indian Order in Council, 1907, relating to appeals with power of consolidation for the purpose of saving costs within the

O. 45, R. 4 (*Coldstream and Bhude, J.J.*)
CHANDAR BHAN v. FATER SHER

40 P.L.R. 658—A.I.R. 1938 Lah. 207.

—O. 45, R. 7—Compliance—Security for cost under—Time for—Security bond executed and filed Court by surety within time—Subsequent withdrawal by surety from undertaking—Deposit of cash—Security—If furnished within time.

A.I.R. 1938 Lah. 350
 —O. 43, R. 1 (s)—Applicability—Order dismissing application for removal of receiver. See C. P. CODE O. 40, R. 1 AND O. 43, R. 1 (S) A.I.R. 1938 Rang. 387

—O. 43, R. 1 (s)—Nature of order appealable under. See C. P. CODE, O. 40 R. 1, AND O. 43 R. 1 (s).
 A.I.R. 1938 Nag. 540.

C. P. CODE (1908), O. 45, R. 7.

An applicant for leave to appeal to the Privy Council was allowed at the time of grant of leave to furnish security of another kind than in cash or Government

only required and filed in Court within the time limited by O. 45, R. 7, C. P. Code, but sent for verification, *S N* stated the ing to stand surety any longer. deposited the requisite amount in ca respondent objected that the security in time prescribed by O. 45, R. 7

(*Niamatullah and Verma*
SHIAM LAL.

1938 A.L.

1938 A.W.R. 9

—O. 45, R. 7 and P

the security—Extension of

Under R. 9 of the Privy

has full discretion to extend
rity or to extend the time to make good any deficiency in
the security furnished. (*Thomas, C. J. and Zia ul*
Hasan, J.) RAJA MOHAN MANUCHA = MANZUR
AHMAD KHAN. 178 I.O. 389=1938 O.W.N. 1121=

1938 O.L.R. 485=1938 A.W.R. O.O. 113.

—O. 45, R. 7—Extension of time for giving security—Power of Court.

Court cannot extend time for

the period prescribed by O. 4

(Goldstream and Bhide, J.J.)

FATEH SHER, 40 P.L.R. 658=

—O. 45, R. 7—Extension

Court.

The provision relating to t

security is to be given embodied in O.

Code, is directory only and the Court

appeal is preferred has power to ext

cogent reasons are forthcoming (*Ad*and *Din Mohamed, J.*) PREMII

BANK OF NORTHERN INDIA, I

—O. 45, R. 7—Furnishing of security

expiring during vacation—Security, if can be furnished

on resuming day.

If the time for the furnishing of the security under

O. 45, R. 7, C. P. Code, expires on a day when the

Court is closed for the vacation, compliance with the

making deposit—Power of Court to extend—Privy

Council Rules, R. 9.

In an appeal to His Majesty-in-Council the High

Court has power under R. 9 of the Privy Council Rules

to extend the period allowed for furnishing the security

and the making of the deposit—*Pr*

C. P. CODE (1908), O. 47, R. 1.

1938 M.W.N. 678=48 L.W. 35=

A.I.R. 1938 Mad. 796=(1938) 2 M.L.J. 128 (F.B.).

—O. 45, R. 9—Acceptance of security—When may

has power

ished under

under R. 8

and not at any subsequent stage. (*Admission, Ag. C.J.*

Specific prayer for transmission to Court concerned, if

necessary—Procedure adopted by Chief Court, Oudh with

reference to such applications.

When an application under O. 45, R. 15, C.P. Code

prays that the memo of costs be prepared, it includes

also a prayer for transmission of the order to the Court

concerned. The usual practice adopted by the Chief

Court of Oudh with reference to such applications is to

15(2), C. P. Code it

directions and parti-

for. (*Thomas, C.*

v. DEO SINGH.

178 I.O. 212=1938 O.L.R. 476=

1938 O.W.N. 1015=A.I.R. 1938 Oudh 250.

—O. 47, R. 1—Applicability—Appeal—Dismissal

for non payment of printing charges—Application to

restore—If one for review. See COURT FEES ACT,

A.I.R. 1938 Pat. 111.

—Application—Suit dismissed for

R. 8 or under O. 17, R. 3—

been dismissed for default or

P. Code, there is no ground for

any application in review. The remedy of the plaintiff

lies either in an appeal if the order of dismissal is

passed under O. 17, R. 3, C. P. Code, or is an applica-

tion under O. 9, R. 9, if the suit is dismissed for default.

(*Durling, S. M. and Ramford, J. M.*) BALWANTI v.

115=1938 E.D. 184.

arent on the face of the

compulsorily registrable

award without atten-

review—Power of Court.

C. P. CODE (1908), O. 47, R. 1.

See REGISTRATION ACT, SS. 17 (1) (b) AND 49.

40 Bom.L.R. 952.

—O. 47, R. 1—“Mistake or error apparent on the face of the record”—Meaning of.

Rule 1 of O. 47, C. P. Code, is definitive of the limits within which review is permitted. A mistake of law is not in itself a sufficient mistake or error apparent on the

closed without referring to

There is no difference

debatable point. An error

analogous to an error

record. Nor would an error

amount to a mistake or error on

(Stone, C. J. and Puranik, J.)

CHANDRA. I L.R. 1938 Nag. 1

—O. 47, R. 1—Mistake or

error—Debatable point of law

If a ground for review.

An erroneous view of the law on a debatable point or a wrong exposition of the law or a wrong application of the law cannot be considered a mistake or error on the

face of the record, and as such cannot be a ground for review. (Ismail, J.) KISHAN CHAND SINGH v.

MUKAND SAWARUP. 175 I C. 586 = 1938 B D. 496 =

10 B A. 703 = 1938 A L R. 448 =

1938 A.W.R. (H O) 196 = A.I.R. 1938 All. 308

—O. 47, R. 1—New evidence—Proof required

DHONE MAJUMDAR. I L.R. (1938) 2 Cal 361.

—O. 47, R. 1—Review—Grounds of

review

Though a petition for review of the Board's order may

—O. 47, R. 1—Review—“For any other sufficient

reason”—Mistake or error on the face of the record—

Meaning of

The words “for any other sufficient reason” mean

applies, it may be a mistake apparent on the face of the

C. P. CODE (1908), O. 47, R. 4.

record. (Stone, C. J. and Puranik, J.) JAGARAO

ANNAJI v. BALWANT TUKARAM. 175 I C. 649 =

11 B.N. 4 = A.I.R. 1938 Nag. 221.

—O. 47, R. 1—Review—Ground for—Mistaken

view of law.

It may be possible to argue that a review lies if a

“mistake or error apparent on the face of the record” is shown.

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A.I.R. 1938 Nag. 221.

—Review—Grounds for—Predecessor

the only point of importance—If

sufficient reason.

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and Bomford,

1938 B D. 184.

ite party’—Pro

forma defendant—Proceedings ex parte against him

throughout—Notice of review to him—If necessary.

In a suit by some reversioners for setting aside an

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him was necessary before the review was granted.

C. P. CODE (1908), O. 47, R. 7.

Held, that the *pro forma* defendant's could not under

O. 47, R. 7—Order

compliance with O. 47, R. 3—If a ground of appeal.

An order allowing an application for review is not appealable on the ground that the application was not in compliance with R. 3 of O. 47, C. P. Code. An appeal can lie only on the grounds mentioned in R. 7 (*Darling, S M and Bomford, J A*) BALWANTI v. BADAL. 1938 R. D. 184 = 1938 A. W. R. (B. R.) 115.

Sch. II—Reference to arbitration—Death of a party to—Effect of—English law, applicability—Add-

bounded by the decision. Though a party dies before the completion of the hearing, it would be necessary to make the representatives, parties to the submission, where the death occurs after the termination of the hearing and just before the delivery of the award, the delivery of the award without the addition of the representatives, is none the less binding on the represent-

A.I.R. 1938 Oudh 125.

Sch. II, Para. 1—Arbitration—Award—Valid-
ity—Ex parte defendant not signing reference.

Where one of the defendants who remained *ex parte* did not sign the reference to arbitration, the very fact of a reference to arbitration is absent and there is no valid submission. An award on it is

Sch. II, Para. 1—Applicability—Execution pro-

tion, which is embodied in the statement made by the parties counsel, was not supported several parties who were interested, valid and could not give the Court in the matter to arbitration (*Alul* WAHEED KHAN v. RAM BUX.

1938 A. W. R. H. O. 691—

Sch. II, Para. 1—Reference—One of defendants

not joining in—Validity.
A dispute was referred to arbitral defendants did not join in the reference passed making the person joining for the amount in dispute. He contended that the reference was *ab initio* void as the other person had not joined the reference.

Held, that the reference was not invalid by the other defendant not joining the reference and that the award was binding on the person party to the reference and

C. P. CODE (1908), Sch. II, Para. 15.

could not be interfered with in revision. (*Almond, J. C.*) MIAN RAHMATULLAH v. SAYED ALAM SHAH.

177 I. O. 285 = 11 B. Pesh. 19 = A.I.R. 1933 Pesh. 47.
It controls O. 23, R. I
inding—Permission to
nt. See C. P. CODE,
= 1937 A. I. J. 1163.

Sch. II, Para. 8—Filing of award—Power of
Court to extend time after award had been made.

Under Para. 8 of Sch. II, C. P. Code, the Court has power to extend time for the filing of the award even after the award had actually been made. (*Costello and Panckridge, J. J.*) JETHALAL LAXMICHAND SHAH v. ANRITALAL OJHA. I.L.E. (1938) 2 Cal. 482 = 42 C. W. N. 883.

Sch. II, para. 14 (c)—Scope—Objection to

arbitration on reference in accordance with the provisions of the schedule can be filed or not. An award made in favour of an unregistered company can be filed on the application of that company, and such an application is not barred under S. 69 (1) of the Partnership Act. The fact that it is in favour of an unregistered

175 I. O. 468 = 4 B. R. 587 = 10 R. P. 624 =
19 Pat. L. T. 548 = A.I.R. 1938 Pat. 231.

Sch. II, Paras. 15 (c) and 20—Objection that
not
orite
ourt
fore
arbitrator—Separate suit for dissolution of partnership
against applicant by opposite party—Decision on question
whether parties were partners—*Res judicata*.

The grounds of invalidity of an award contemplated in Para. 15 (c) refer to those matters which apparently go to the root of the award and matters

No such objection was raised before the arbitrator. The

the opposite party was a partner of the applicant operat-

a separate proceeding. Not having raised any objection before the arbitrator on the score of partnership to the claim put forward by the applicant, he could not afterwards challenge the award on the ground that it had been obtained by one partner against another for a specific sum.

C. P. CODE (1908), Sch. II, Para. 16.

Held also, that the objection in Sch. II, Para. 20, C.P. Code, proceeding was not covered by Sch. II, Para. 15 (c) and so the mere fact that opposite party did not persist in its objection did not debar it from contesting the question in the suit for dissolution of partnership. There the question was directly and substantially in issue and on it blinged the decision of the whole case. (*Addison and Din Mohamed, ff*). **HARDAR**
SINGH - NAWA KISHEN SINGH

174 I.C. 766 = 1938 O.W.N. 475 = 1938 M.L.R. 215 =
10 B. 275 = 1938 O.A. 367 =
A.I.R. 1938 Oudh 151.

— Sch. II, Para. 17—Agreement to refer to arbitration—Some of the matters within jurisdiction of Revenue Court—Agreement, if can be filed

An agreement for reference to arbitration cannot be filed in a Civil Court under Para. 17, Sch. II, C. P. Code, if some of the matters included therein are within

— Sch. II, Paras. 17 and 19—Agreement to refer dispute to arbitrators nominated by each party—One of

C. P. CODE (1908), Sch. II, Para. 20.

NACHIAR v. MAHOMED NAINA MARAJAR.
177 I.C. 440 = 1938 M.W.N. 1124 (2) =
11 B.M. 325 = A.I.R. 1938 Mad 205 =
(1938) 1 M.L.J. 38.

— Sch. II, Para. 18—Application under—Statement in written statement setting up an agreement to refer to arbitration—If amounts to an application for stay.

CHIAR v. MAHOMED NAINA MARAJAR.
7 I.C. 440 = 1938 M.W.N. 1124 (2) =
B.M. 325 = A.I.R. 1938 Mad 205 =
(1938) 1 M.L.J. 38.

— Sch. II, Para. 18—Order adjourning suit sine die—Propriety—Proper order

Where the Court refers the suit to arbitration in accordance with the agreement between parties to refer to arbitration under Para. 18 of Sch. II, C. P. Code, an order adjourning the suit *sine die* is not proper and the proper order is to adjourn the suit for a definite period (*Hornell, J.*) **MAHOMED MOHIDEEN NA-**

1124 (2) =
Mad 205 =
1 M.L.J. 38.

— Sch. II, Para. 18—Scope—Plea of arbitration clause in defence to suit—When to be taken—Contract

tion of an arbitrator in case any are nominated refuses to act, and one of arbitrators refuses to act, the Court has make the necessary appointment so as to ment operative and effectual (*Addison Din Mohammad, J.*) **SALIG RAM BH KISHEN SINGH** A.I.R. 1

— Sch. II, Para. 17—Refusal to ac ment to refer—Reference if could be made

Though the arbitrators might have rel before the application for a reference unde Sch. II C. P. Code, yet the Court has Para. 17 to make an order of reference (*Verma, J.*) **DATTA MAL v. AMAR NATH**

176 I.C. 404 = 11 B.A. 102 = 1938 A.L.J. 544 =
1938 A.W.R. (H.C.) 431 = 1938 A.L.R. 615 =
A.I.R. 1938 All 414

— Sch. II, Para. 18—Application for stay—When to be made

The provisions of Para. 8, Sch. II of C. P. Code, are mandatory and an application under that section for stay should be made at the earliest

Where a suit was filed in August, were framed in December of that tion to stay the suit was put in only the instance of the Court

Held, that it cannot be said that the provisions of Para. 18 of Sch. II of the C. P. Code have been com plied with. (*Hornell, J.*) **MAHOMED MOHIDEEN**

Y. D. 1938—26

(*Courtney Terrell C.J. and Noor, J.*) **SECRETARY OF STATE v. SURENDRA MOHAN LAHIRI** 17 Pat 293 = 1938 P.W.N. 138

— Sch. II, Para. 20—Application to file an ar—Objections filed—Objector absent on second adjourned date—Order to proceed ex parte raised—Objector appearing before final order—Right to get ex parte pro-

second adjourned date the objector was absent and ex parte proceedings were taken against him and the case was postponed to another date, and no replication was filed by the applicant up to that date, and the ob

C. P. CODE (1908), Sch. II, Para. 20.

COMPANY.

A.I.R. 1938 Lah. 486

Sch. II, Para 20—Construction and scope—Parties to suit pending in Revenue Court—Agreement of reference to arbitration without intervention of Court—Award—Application to Civil Court to file award—Jurisdiction of Civil Court to file award and pass decree.

The right to agree to refer to an arbitration and to file an award under para. 20 of Sch. II, C. P. Code, is

in such a manner that the fact of its having been given is indisputable. The essence of the paragraph is that there shall be a written permission as opposed to an oral permission, which would be susceptible of evidence of varying degrees of credibility in order to establish the necessary proof. What is required is certainty, and where there is a written record of facts which cannot be disputed, an unmistakable inference drawn from this written record that permission was given, fulfils the formal permission

POONAMCHAND

ever might be the decision of the Court in a suit before it, the award under para. 20 of Sch. II, C. P. Code, is dictation to deal with the accordance with it.

GANGA PRASAD SIN:
127 I.O. 267,
1937 A.

Sch. II, Para 20—Parties to suit outside Court—Arbitration Act, S. 17 (1) (b).

Paras. 20 and 21 of Sch. II, C. P. Code, which provide for the enforcement of awards in arbitrations made outside Court do not require that the awards should be registered before they can be filed though the awards might affect in the value of Rs. 100 or upwards, before not necessary in the case of an award of the Registration Act does not affect proceedings of arbitrators are joined and there is no reason to suppose

arbitrators is a document falling under § 17 (1) (b) of the Registration Act, (Bennet, J.) SHED RAM v. RAM DATT, 175 I.O. 397=10 E.A. 681=1938 E.D. 31=1938 A.L.R. 434=1937 A.L.J. 1303=1937 A.W.R. 1218=A.I.R. 1938 All. 88.

Sch. II, Para 20 and 21—Jurisdiction—Immovable property dealt with by award and parties to it within jurisdiction of Court—Business, subject matter of award carried on by parties outside Court's jurisdiction—If suits jurisdiction of Court.

Where all the immovable property dealt with by the award is situated within the jurisdiction of the Court, and the Court has jurisdiction to entertain an application under Para. 20 of Sch. II and to order the award to be filed under Para. 21, (Kupchand Bhatnagar, A.J.C. and Lohia, J.C.) VISHINDAS KHUSHALDAS v. TEJUMAL KHUSHALDAS, 174 I.O. 334=10 E.A. 250=A.I.R. 1938 Sind 59.

Sch. II, Para 21—Award having undetermined part of the matters referred—It can be filed.

An award which has admittedly left undetermined part of the matters referred to arbitration could not be filed under Para. 21 of Sch. II, C. P. Code, (Agarwala, J.)

177 I.O. 871=1938 Nag. 309.

(Beckett, J.) RAM SUKH MAL v. HAR SAHAI MAL, 40 P.L.R. 753=A.I.R. 1938 Lah. 758. CLUB—Expulsion of member—Power of Court to

Directors
Extraordinary general meeting.
Joint Hindu family
Shares.
Surrender of shares.
Winding up.

Articles of Association—Alteration—Powers of company—Special contract with company in terms of or embodying article—Power of company to evade by altering article.

There is a very clear distinction between the relation of a shareholder to a company in regard to his shares and the relation of a shareholder to a company in regard to other matters contained in a contract which is revocable by the company. A contract may be made with the company in the terms of or embodying one or more of the Articles, and a company cannot break its contracts by altering its Articles. When dealing with contracts referring to revocable Articles, and especially with contracts between a member of the company and the company respecting his share, care must be taken not to assume that the contract involves as one of its terms an Article which is not to be altered. If the Court sees that a contract involves as one of its terms that an Article is not to be altered, then the company is not at liberty to alter that Article so as to break that contract.

COMPANY.

(*Reilly, C. J. and Abdul Ghani*,
ASIATIC GOVERNMENT SECURITY
CO., LTD 43 Mys H C B 396—
Articles of Association—Right
records given to members under—
by rules.

A power to regulate a right cannot be used to abrogate it. If a member has under the Articles of Association a contractual right of inspection of the minutes of the committee of the association, the right cannot be reduced by the power given under the Articles to the com

contractual right of inspection, just as a statutory right of inspection, can be exercised whatever the motive or interest of the member may be. (*Remfry, J*) RAMESWAR LAL & CALCUTTA WHEAT AND SEED ASSOCIATION, LTD 42 C W N 161—A I R 1938 Cal. 89.

Articles of Association—Right of inspection of

right would do. In the case of a statutory right of inspection the Court will not imply a right to take copies unless the statutory right would otherwise be of no avail, or practically useless. The Court is bound by a stricter rule when a question of implying a term in a contract arises than in the case of a statute.

that the intention was to give a right to take copies of the minutes, the Articles must be construed to mean that the members, though given a right to inspect the minutes, could only take copies of them if that were permissible under their common law rights. If the interests of members are sufficiently protected by the common law, there is no necessity for implying any greater rights in their contract. The members are not entitled under their common law right to take copies of the minutes if their interest is not different from that of their fellow members, and if they have no special object of their own. (*Remfry, J*) RAMESWAR LAL & CALCUTTA WHEAT AND SEED ASSOCIATION, LTD 42 C W N 161—A I R 1938 Cal. 89

the intention there can be no ratification without an intention to ratify, and there can be no intention to ratify an illegal act without knowledge of the illegality (1869) 3 M L 171, Foll.

(*Lord Romer*.) PREMILA
NORTHERN INDIA, LTD

Directors—Power

The assets of a company cannot be disposed of by a resolution of the Directors only. They can only be dis-

COMPANY.

company for satisfaction of its debts, *ultra vires* and a transfer of property effected in pursuance of such resolution is ineffectual to pass any title to the transferee so as to entitle him to bring a suit under O. 21, R. 63, C. P. Code, more so when the formalities in respect of the deed of transfer provided by the Articles of Association

not been observed and the
not by the Director so author-
hose authority to act for the
(*Mosely and Dunkley, Jf.*)

A I R 1938 Rang 447.

Extraordinary general meeting of shareholders
Notice of—Contents of.

Notice of an extraordinary general meeting of the shareholders of a company must disclose all facts necessary to enable the shareholders to determine in his own interest whether or not he ought to attend the meeting. The necessary interest of a director in the matter of a

posed at the meeting is a

(*Reilly, C. J. and Abdul*

ASIATIC GOVERNMENT

SECURITY LIFE ASSURANCE CO., LTD.

43 Mys H C B 398—18 Mys L J. 448.

Joint Hindu family—Shares held by certificates
standing in name of one member—If negotiable instru-
ments—Right of other members.

Share certificates are not negotiable instruments, so

no right or interest in them (*Abdul Ghani and Singaravelu Mudaliar, Jf.*) AKKITHIMMAH & RANGAPPA 16 Mys L J. 115—43 Mys H C B, 58

Shares—Forfeiture of—Strict fulfilment of con-
ditions—Necessity for.

In the matter of the forfeiture of shares, technicalities must be strictly observed. And it is not, merely the person whose shares are being forfeited who is entitled to insist upon the strict fulfilment of the conditions prescribed for forfeiture. For, the forfeiture of shares may result in a permanent reduction of the capital of a company. The creditors are therefore entitled to see that the power of forfeiting shares is exercised strictly. Where the power of a company to forfeit shares has

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(P C.)

Surrender of shares—Validity—Conditions

Per Trail Judge, *Rupchand, A J C*—There can be

dom, except where shares are forfeited as it involves a reduction of capital, before this can be done the sanction of the Court must be obtained. A surrender which

C. P. CODE (1908), Sch. II, Para. 20.

appeared on that date and asked for the setting aside of

ties to suit pending in Revenue Court—Agreement of reference to arbitration without intervention of Court—Award—Application to Civil Court to file award—Jurisdiction of Civil Court to file award and past decree.

The right to agree to refer to an arbitration and to file an award under para. 20 of Sch. II, C. P. Code, is

reference being that the award would be effective whatever might be the decision of the Revenue Court in the suit before it, the award under para. 20 of Sch. II, C. P. Code, is in accordance with it, (GANGA PRASAD SING 127 I O 987—1937 A I

A I R 1938 All. 46.

Sch. II, Paras. 20 and 21—Award in arbitration outside Court—Registration—Necessity—Registration Act, S. 17 (1) (b).

Paras. 20 and 21 of Sch. II, C. P. Code, which provide for the enforcement of awards in arbitrations made outside Court do not require that the awards should be registered before they can be filed or enforced, even though the awards might affect immovable property of the value of Rs. 100 or upwards. Registration is therefore not necessary in the case of such an award. S. 17 of the Registration Act does not affect the matter. The proceedings of arbitrators are judicial in their nature and there is no reason to suppose that the award of arbitrators is a document falling under S. 17 (1) (b) of the Registration Act. (Bennet, J.) SHEO RAM v. RAST DATT. 175 I O 397—10 E A 681—1938 E D. 31—1938 A L R. 434—1937 A L J. 1303—1937 A W R. 1218—A I R 1938 All. 88.

Sch. II, Paras 20 and 21—Jurisdiction—Immovable property dealt with by award and parties to it within jurisdiction of Court—Business, subject-matter of award carried on by parties outside Court's jurisdiction.

the Court, and the Court has jurisdiction to entertain an application under Para. 20 of Sch. II and to order the award to be filed under Para. 21. (Rupchand Bilaram, Ag. J. C. and Loh, J. C.) VISHINDAS KHUSHALDAS v. TEJUMAL KHUSHALDAS. 174 I O. 334—10 E S 250—A I R. 1938 Sind 69.

Sch. II, Para 21—Award leaving an undetermined part of the matters referred—It can be filed.

An award which has admittedly left undetermined part of the matters referred to arbitration could not be filed under Para. 21 of Sch. II, C. P. Code. (Agarwal,

COMPANY.

J.) BIJADHAR RAM v. RAJKARAN SINGH.

there shall be a written permission as opposed to an oral permission, which would be susceptible of evidence of varying degrees of credibility in order to establish the necessary proof. What is required is certainty, and where there is a written record of facts which cannot be disputed, an unmistakable inference drawn from this written record that permission was given, fulfils the formal permission POONAMCHAND

177 I O 971—A I R 1938 Nag. 309.

Appendix—Forms in—Adherence to—Necessity.

decree in a suit for dissolution of partnership and the taking of partnership accounts, it is just as much applicable when the Court is asked to declare that a dissolution has taken place and an account is still required. (Beckett, J.) RAM SUKH MAL v. HAR SAHAI MAL. 40 P L R. 753—A I R 1938 Lah. 758

CLUB—Expulsion of member—Power of Court to review—Resolution expelling member passed at meeting without discussion of reasons—Rule authorizing expulsion without assigning reasons—Effect of—Jurisdiction of Court to interfere—Principles of natural justice See JURISDICTION—CIVIL COURT. 40 Bom L R. 1213.

COMPANY.

Articles of Association.

Directors.

Extraordinary general meeting.

Joint Hindu family

Shares.

Surrender of shares.

Winding up.

Articles of Association—Alteration—Powers of company—Special contract with company in terms of or embodying article—Power of company to evade

between the relation regard to his shares y in regard to other ons contained in a are revocable by may be made with

the company in the terms of or embodying one or more of the Articles, and a company cannot break its contracts by altering its Articles. When dealing with contracts referring to revocable Articles, and especially with contracts between a member of the company and the company respecting his share, care must be taken not to assume that the contract involves as one of its terms an Article which is not to be altered. If the Court sees that a contract involves as one of its terms that an Article is not to be altered, then the company is not at liberty to alter that Article so as to break that contract,

COMPANY.

(*Reilly, C. J. and Abdul Ghani*, 396 = 18 Mys L J. 448.
ASIATIC GOVERNMENT SECURITY
CO., LTD 43 Mys H O R. 396 =
Articles of Association—Right
records given to members under
by rules.

A power to regulate a right cannot be used to abrogate it. If a member has under the Articles of Association a contractual right of inspection of the minutes of the committee of the association, the right cannot be reduced by the power given under the Articles to the committee to make rules, into a mere right to claim inspection.

contractual right of inspection, just as a statutory right of inspection, can be exercised whatever the motive or interest of the member may be. (*Remfry, J*) RAMESWAR LAL D. CAL
TION, LTD

Articles

that the intention was to give a right to take copies of the minutes, the Articles must be construed to mean that the members, though given a right to inspect the minutes, could only take copies of them if that were permissible under their common law rights. If the interests of members are sufficiently protected by the common law, there is no necessity for implying any greater rights in their contract. The members are not entitled under their common law right to take copies of the minutes if their interest is not different from that of their fellow members, and if they have no special object of their own. (*Remfry, J*) RAMESWAR LAL D. CALCUTTA WHEAT AND SEED ASSOCIATION, LTD
42 C W N 161 = A I R 1938 Cal 89

Directors—Act of directors ultra vires—Ratification

THE TRANSACTION THERE CAN BE NO RATIFICATION WITHOUT an intention to ratify, and there can be no intention to ratify an illegal act without knowledge of the illegality (1869) 3 H L 171, Foll. (Lord Romer.) PREMILA I
NORTHERN INDIA, LTD A

Directors—Power

The assets of a company cannot be disposed of by a resolution of the Directors only. They can only be dis-

COMPANY.

company for satisfaction of its debts, is ultra vires and a transfer of property effected in pursuance of such resolution is ineffectual to pass any title to the transferee so as to entitle him to bring a suit under O. 21, R. 63, C. P. Code, more so when the formalities in respect of the deed of transfer provided by the Articles of Association of the company have not been observed and the transfer has been effected not by the Director so authorized but by the Secretary. (*Reilly, C. J.*)
Bang 447.

Extraordinary general meeting of shareholders—Notice of—Contents of.

Notice of an extraordinary general meeting of the all facts necessary in his own mind to call the meeting, he matter of a proposed at the meeting is a (*Reilly, C. J. and Abdul* ASIATIC GOVERNMENT CO., LTD
396 = 18 Mys L J. 448.
Shares held by certificates
If negotiable instrum

Notice—Right of other members

no right or interest in them (*Abdul Ghani and Singaravelu Mudaliar, JJ*) AKKITHIMMAH v RANGAPPA. 16 Mys L J. 115 = 48 Mys H O R 58

Shares—Forfeiture of—Strict fulfilment of conditions—Necessity for.

In the matter of the forfeiture of shares, technicalities must be strictly observed. And it is not, merely the person whose shares are being forfeited who is entitled to insist upon the strict fulfilment of the conditions prescribed for forfeiture. For, the forfeiture of shares may result in a permanent reduction of the capital of a company. The creditors are therefore entitled to see that the power of forfeiting shares is exercised strictly. Where the power of a company to forfeit shares has arisen, the Articles of Association usually contain provisions which may be construed to require the directors to take such steps as may be necessary to ensure the strict fulfilment of the conditions prescribed for forfeiture. For, the forfeiture of shares may result in a permanent reduction of the capital of a company. The creditors are therefore entitled to see that the power of forfeiting shares is exercised strictly. Where the power of a company to forfeit shares has arisen, the Articles of Association usually contain provisions which may be construed to require the directors to take such steps as may be necessary to ensure the strict fulfilment of the conditions prescribed for forfeiture.

may be construed to require the directors to take such steps as may be necessary to ensure the strict fulfilment of the conditions prescribed for forfeiture. For, the forfeiture of shares may result in a permanent reduction of the capital of a company. The creditors are therefore entitled to see that the power of forfeiting shares is exercised strictly. Where the power of a company to forfeit shares has arisen, the Articles of Association usually contain provisions which may be construed to require the directors to take such steps as may be necessary to ensure the strict fulfilment of the conditions prescribed for forfeiture.

Surrender of shares—Validity—Conditions

Per Trail Judge, *Rupchand, A J C*—There can be

dom, except where shares are forfeited as it involves a reduction of capital, before this can be done the sanction of the Court must be obtained. A surrender wh

COMPANY.

the effect of releasing a shareholder from further liability in respect of his shares is equivalent to a purchase of the shares of the company and is illegal, and null void. Such a surrender can only be supported in circumstances which would justify a forfeiture of shares. (*Mehra and Lobo, JJ*) **VAZIRMAL KEWALRAM v. MAKARAN COAST STEAM NAVIGATION CO., LTD.**
32 S.L.R. 167=177 I.C. 577=11 R.S. 65=
A.I.R. 1938 Sind 187.

—*Winding up—Call order—Defendant holding shares in company registered in Indian State and residing in British India—Call order made against him by State Liquidation Court—Enforceability.*

In a personal action, a decree pronounced by a Court of a foreign state in *absentem*, the defendant not having submitted to its authority, is by international law a nullity. Where the defendant who is a shareholder in a company registered in an Indian State and is a resident of British India, does not appear before the State Liquidation Court, before which the liquidation proceedings in respect of the company are started, and does not submit to the jurisdiction of the Liquidation Court, a call order made against him by the Liquidation Court, in advance of an express agreement in the Articles of Association that the disputes with the shareholders should be settled by the State Court, is without jurisdiction and cannot be enforced as such in British India. It is necessary that the liquidator suing the defendant in *absentem*.

facts to establish order to allow for the particular fact that in such proceedings MODERN CHE MOHAN NATH

COMPANIES

panies—Policy holder—Right to apply for winding up
See LIFE INSURANCE COMPANIES ACT, S. 22(a)
40 Bom.L.R. 52.

COMPANIES ACT (VII OF 1913), S. 4—*Applicability—Joint family business concern.*

A trading association to be within S. 4 of the Companies Act is to be determined on the facts.

not, the share, come within the scope of that section. (*Mitter and Birmah, JJ*) **NIBARAN CHANDRA SHAHA v. LALIT MOHAN**

—S. 4 of governs r association its format ten in nu

twenty in other instances, but if the number increases later on and exceeds the maximum allowable, the association becomes an illegal one, if no registration is effected. (*Mitter and Birmah, JJ*) **DRA SHAHA v. LALIT MOHAN**

—S. 4—*Suit by unregistered partnership.*

COMPANIES ACT (1913), S. 30.

A suit by an association which is an illegal one by virtue of the fact of

—S. 4—*Unregistered association—Beneficial interest of members.*

The members of a partnership or company or association hit by S. 4 of the Companies Act can have beneficial interest in property. (*Mitter and Birmah, JJ*) **NIBARAN CHANDRA SHAHA v. LALIT MOHAN BRINDARAN SHAHA.** I.L.R. (1938) 2 Cal 568.

—S. 4(2)—*Scope—Partnership of less than twenty—Subsequent increase of members to over twenty and conversion into joint stock Company—Member of original firm not aware of increase of members or change and not allotted any share in new firm—New firm not registered—Suit by member for declaration of dissolution of firm and for accounts—If barred.*

Where a firm consisting of less than twenty partners is subsequently converted into a joint-stock company with additional partners so as to consist of more than twenty partners, it must be registered under the Companies Act; if it is not so registered, no suit can be maintained in respect of that partnership. But when a person who was a partner in the firm and was, as such, entitled to a share of the profits when the membership of the firm was below twenty, is not allotted any share in the new firm.

175 I.C. 290=10 R.M. 764=A.I.R. 1938 Mad 151.

—Ss 30 and 184—*Signatories to memorandum of association—Liability to be included in list of contributories—Actual entry in register of shares or actual allotment of shares—If condition precedent.*

It is well settled that the signatories to the memorandum of association of a company are liable to contribute to the capital of the company.

register nor the allotment of shares is a condition precedent. Each subscriber at once by subscribing irrevocably

—S. 30(2)—*Scope—Non compliance—Effect of.*
Per Trial Judge, *Rufchand A. J. C.*—S. 30(2) of the companies Act merely lays down a rule of procedure.

to have agreed to have purchased and to pay for. A

COMPANIES ACT (1913), S. 55.

director is bound to see if the allotment of shares is made. He cannot avoid his liability to pay for the shares by pleading his own making the allotment of shares.

(Lobo, J.) VAZIRMAL KIWALR
STEAM NAVIGATION CO., LTD

177 I.C. 577-11 R.S. 65-

COMPANIES ACT (1913), S. 91-A.

meeting on 21st February, 1937. In this notice the meeting was designated as an extraordinary general meeting of the shareholders of the company. The same

proposals. Another meeting of shareholders held on

in a reduction of the share capital of the company.

decision has been arrived at fully cognizant of their necessities as custodians of their interests and slow to interfere. (*Air Ahmad*)
TRICAL ENGINEERING AND C
In re. 177 I.C.

—S 78 (1)—Constructio

shall be a general meeting held once at least year, i.e., one separate and distinct meeting. It does not mean that the same meeting can go several years being held once in each year.

(Burn, J.) SKEE MEENAKSHI MILLS CO., LTD v ASST. REGISTRAR OF JOINT STOCK COMPANIES, MADURA 1938 M.W.N. 608-11 R.M. 358(1)= 177 I.C. 600-39 Cr L.J. 907(1)= 47 L.W. 635-A.I.R. 1938 Mad 640- (1938) 1 M.L.J. 856

—S 81—Resolution relating to question of reduction of capital—Validity—Amendment of section after adjournment of meeting—Effect on procedure

A notice was issued on 21st December, 1936 for the purpose of calling an ordinary general meeting of the shareholders of a private limited liability company on 30th December, 1936 for deciding the question of reducing the capital and assets of the company. At the meeting held on 30th December, 1936, eight out of the nine shareholders of the company were present. The ninth shareholder had died before the notice was issued and his legal representatives had not obtained succession certificate to entitle them to take part in the proceedings. An objection having been raised as to circulation of the balance sheet, the meeting was adjourned to 21st February 1937. Another notice was issued on 6th February, 1937, to convene the adjourned

Contract not made

Act is not limited to of the directors but contracts were not made

at such a meeting (*Jack and Patterson, J.J.*) RABINDRANATH MITRA v EMPEROR 42 O.W.N. 533= 176 I.C. 108-11 R.M. 39=39 Cr L.J. 687 (2)= A.I.R. 1938 Cal 440

—S. 91-A (1)—Disclosure of interest—Proof—Letter by purchasing director to chairman—Sufficiency

A letter written by the purchasing director to the chairman of the Board of Directors who merely signed it as noted, does not prove that the disclosure of the director's interest was made at any meeting of the directors as required by S 91 A (1) of the Companies Act, when it is not referred to in the minutes of any of the meetings (*Jack and Patterson, J.J.*) RABINDRANATH MITRA v EMPEROR 42 C.W.N. 533= 176 I.C. 108-11 R.C. 39=39 Cr L.J. 687 (2)= A.I.R. 1938 Cal 440.

—S 91-A (1). Proviso—Fetty purchases by director—Disclosure of interest—If necessary

Fetty purchases by a director of a company from a firm in which he has an interest, are covered by the proviso to S. 91 A (1) of the Companies Act, and the director's interest should be disclosed in the manner provided for therein. (*Jack and Patterson, J.*)

COMPANIES ACT (1913), S. 91 B.

RABINDRA NATH MITRA v. EMPEROR.

42 O.W.N. 533 = 176 I.C. 108 = 11 E.C. 39 =

39 Or L.J. 687 (2) = A.I.R. 1938 Cal 440

—S. 91 B—*Transaction entered into by interested director—Voidable*

Where a direct shareholder in a position towards which is proposer company of which the rule laid down at the instant entered into, if and owes a duty which conflicts with his duty to the company of which he is the director. It is immaterial whether the conflicting interest belongs to him beneficially or as a trustee for others. S. 91 B would not however deprive of the benefit of his contract with the company a third party who had no notice of the defect in the director's authority. Such a person would be entitled to assume that the internal management of the company is properly conducted. But if the third party

P company as security for debt owed really by A T company and obtained an equitable mortgage over P's property by two indentures. The A T company which was putting up P's property as security, held almost all the shares in P company and the directors of P company had for years been directors of A T company and these facts were known to directors of the S company in course of their business. Winding up proceedings having been

When to be exercised—Application under S. 183 (5) for removal from list of contributors—If can be allowed.

Where the prospectus issued by a company is a false and misleading document and contained untrue state

COMPANIES ACT (1913), S. 153

to time? (3) Has the company power until such step is taken by the charges to carry on the business of the company in the ordinary way? Where a clause in an agreement was 'that the amount of security money will

ery and other goods with reference to as it amounted to a registered is void. LAW AND INDRA AL LIQUIDATORS,

W.R. (H.C.) 553 = 1938 A.L.R. 867 = A.I.R. 1938 All. 574.

—S. 152—*One of parties to agreement, a company—No specific reference to Arbitration Act—Latter, if applies.*

A company under the Companies Act stands in the Punjab on no different footing than a private individual governed by Punjab Act I of 1911. Therefore if an agreement between the parties of which one is a company to the Arbitration Act, apply to the arbitration Bhide, J.) CHANDU

A.I.R. 1938 Lah. 827.

—S. 152—*References to arbitration by limited liability companies—Arbitration Act alone—If applies.*

The word 'may' after the words 'a company' in the beginning of S. 152 does not go with the sentence 'In accordance with the Indian Arbitration Act, 1899', but with the words 'refer to arbitration'. Again the existence of the words 'In accordance with the Indian Arbitration Act 1899' in Cl. (1) of S. 152 is an indication that the *be de rigueur* that every company to arbitration re Arbitration Act. Cl. (3) that the provisions of the to arbitrations to which a party. Limited liability

PADAM LAL. 141 A.U. 650 = 11 E. Pesh 30 = A.I.R. 1938 Pesh 51.

—S. 153—*Depositors who have obtained decrees—If form separate class from ordinary depositors.*

Per R. K. Mukherjee J.—Depositors with a loan

KRISHNA NATH SEN v. BHARJAPUR LIJAN OFFICE. LTD. I.L.R. (1938) 2 Cal 30 = A.I.R. 1938 Cal. 337.

—S. 153—*Depositor who has obtained decree and depositor who has not—If belong to same class.*

The principal tests as to whether a charge is a floating one are (1) Is it a charge upon all or a certain class of assets, present or future? (2) Would the assets charged in the ordinary course of business be changed from time

COMPANIES ACT (1913), S. 153.

A depositor who has obtained a company in respect of the amount of different position from those persons who is entitled to be considered as belonging class when the provisions of S 153 of the Companies Act are sought to be enforced. 40 C.W.N. 1104, Ref. to. (*Derbyshire, C. J. and Mukherjee, J.*) RAJSHAHI BANKING AND TRADING CORPORATION, LTD. v. PULIN BEHARI MUKHERJEE. 42 C.W.N. 610.

—S. 153—Petition under—Winding up petition filed—Hearing of—If barred—Scheme not placed before shareholders and cred

A petition was presented under S. 153 of the Act referring a scheme, which the holders and creditors for their consideration, but a winding up petition was filed subsequently by some of the

CALCUTTA BANK, LTD. In re 40 L.W. 686—1938 M.W.N. 1082—(1938) 2 M.L.J. 812

—S. 153—Scheme confirmed by Court—Variation—Powers of creditors and shareholders.

Upon confirmation by the Court of a scheme of

or its directors to carry the scheme under the provisions of S. 153 of the Companies Act.

compromise
departure
acquiescence
(*Romer, J.*)

THORN IN

—S. 1

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PULIN BEHARI MUKHERJEE 42 C.W.N. 610.
—S. 156 (1) (i)—Past member—Director of company ceasing to be director—If ceases to be member also.

A director of a company who ceases to be a director does not thereby cease to be a member of the company. He cannot be held to be a "past member" of the company.

—S. 158—'Contributory'—Holder of fully paid up shares.

'Contributory' as defined in S. 158 of the Companies Act includes a shareholder who holds fully paid up shares only. (*Harris, J.*) PARSHOTTAMI L. LIQUIDATOR OF THE GORKHPUR ELECTRIC SUPPLY CO., LTD.

1938 A.W.R. (H.C.) 621—1938 A.L.J. 925—1938 A.L.R. 860—178 I.C. 458—A.L.R. 1938 All. 613.

—S. 160—Scope—Application for order for

A.I.R. 1938 Bom. 182
—S. 171—Appeal or application for revision arising out of action by company—Leave of Court—If

—S. 186 (2)—Contributory of limited company, if

shares
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has been
issued,

COMPANIES ACT (1913), S. 202.

that he has no such right of set-off, if the company be limited. (*Harris, J.*) **PARSHOTTAM DAS v. OFFICIAL**

to His
holding

Appellants

S. 202 is very wide in its terms : against any order in the matter of company, provided such order finally between the parties or deprives the appellant of a substantial and important right. Such an order is appealable under S. 202 and a party aggrieved by the order is entitled to appeal to a Division Bench of the High Court under Cl. 10 of the Letters Patent (*Young, C.J. and Tekchand, J.*) **MULK RAJ v. OFFICIAL LIQUIDATOR, PEOPLES BANK.**

A I R 1938 Lah 658

order holding the application to be maintainable, its order is not of a merely formal or ministerial character, but finally decides points between the parties relating to substantial and important rights. Such an order is appealable under S. 202 and a party aggrieved by the order is entitled to appeal to a Division Bench of the High Court under Cl. 10 of the Letters Patent (*Young, C.J. and Tekchand, J.*) **MULK RAJ v. OFFICIAL LIQUIDATOR, PEOPLES BANK.**

S 217—Sale by liquidator with the consent of the mortgagee—No waiver of security—Liquidation expenses—Priority.

Where a mortgagee of the machinery of agreed to the liquidator selling the machinery was no waiver of the security, on a quest whether the landlord of the premises in which the machinery was kept pending sale negotiation tied to a priority of payment in respect of the rent due as against the mortgagee, it was held that it was no doubt true that the Companies Act provided that expenses incurred in winding up shall be payable out of the assets in priority to all other claims subject to the rights of secured creditors; if any and that if the mortgagee had chosen to enforce his security personally, he would have been entitled to satisfaction before any expenses of liquidation were paid, but as he had invoked the assistance of the liquidator he must bear the cost incidental to the assistance he had received. (*Weston, J.*) **SINGHJI v. BALLABH DAS.** 1938 A I R 244

S 218—Scope—Creditor's right to ask for compulsory winding up where company is in voluntary liquidation—Priority.

The present S. 218 of the Act empowers any creditor who would be entitled to a compulsory order for winding up to ask for such an order though such application is made voluntarily. There is no section in the Act which enables a voluntary liquidator to ask for an order to compulsorily wind up the company. (*Harris, J.*) **SHRI GOPAL CHANDRA v. NARAIN DAS.**

1938 A W R (H.C.) 576—1938 A L J 898—A I R 1938 All 623

S 229—Deposits by employees by way of security—Nature of Trust, if created—Liquidation—Preferential right of such depositors—Tracing.

Where deposits were made to a bank by the employees or on their behalf as security for their faithful and

COMPANIES ACT (1913), S. 235.

honest service and interest was also payable on such deposits, on a question whether such depositors were entitled to a liquidation of the bank to a preferential

it the deposits formed part and parcel of the transaction and the moneys should have been paid to the depositors as a matter of course

from whatever source they might come, but having no other source than the bank, the depositors were entitled to a liquidation of the bank to a preferential

1938 M W N 7—A I R 1938 Mad. 651.
178 I C 428—A I R 1938 Mad. 651.

S. 230—Creditor's right to preferential treatment in respect of money deposited as security—Trust, if created.

Where as part of the agreement of the appointment of certain persons as selling agents they deposited with a company certain amount, which was to carry interest and which was to be repaid on the termination of the period for which those persons acted as selling agents, and such persons applied for the return as per their agreement and not succeeding in getting it applied for the winding up of the company with which they had contracted and contended that they are entitled to preferential treatment in respect of the amount so deposited. It was held that the agreement be-

SUGAR WORKS.
1938 A I R 1938

S. 230 (1) (c) and (2)—Workmen's wages—Rule of priority as to—Extent.

Under the provisions of S. 230 (1) (c) and (2) of the Companies Act, the wages of workmen have a priority of claim over the claims of debenture holders under any agreement with the company. (*Bennet, A.C.*)

J R A J BHAN
I R (H.C.) 591—
178 I C 411—
A I R 1938 All 609

S 235—Application under—Provisions of Civil

1935, Com-
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sions for its contents and the formalities connected with it are provided for by the Companies Act and the rules made thereunder. (*Young, C. J. and Tekchand, J.*) **MULK RAJ v. OFFICIAL LIQUIDATOR PEOPLES BANK.** A I R 1938 Lah. 658.

S. 235—Petition under—Contents.

It is not necessary in a petition presented to the High Court under S. 235 to fully and adequately set out the particulars on which the claim is based. Neither S. 235 nor the rules framed thereunder require that the sum claimed by the liquidator from a director or officer of

COMPANIES ACT (1913), S. 235.

COMPROMISE.

1938 A.W.R. (H.C.) 741

the terms that he had not paid three consecutive instal

235 - Proceedings against directors for mis-

COMPROMISE.

Cl 7 of the compromise dealt with the third set of properties, namely, acquisitions that might be made by the widow out of the income of the estate in her hands or by other means, and it was provided by Cl. 7, that these properties should not merely belong to the widow exclusively, with powers of alienation, etc., but that after her death they should belong to the widow's *own heirs* and that the plaintiff and his heirs should have no right or claim in respect thereof.

Held, on a construction of the compromise, (1) that what was given to the widow under Cls. 1 to 4, in respect of the Zamindari was a strict life estate and not an ordinary widow's estate, and that the plaintiff took a vested remainder as regards the same; (2) that Cl. 6

gift etc., and it was not reasonable to say that the words did not connote what their natural meaning undoubtedly conveyed; (4) that it was not fair to allow the antecedent claims of the parties in the suit to control the construction of the clear words employed in Cl. 6; (5) that the words "her heirs" in Cl. 6 could not read as mean-

—Enforceability by separate suit—Compromise of suit—Decree—Compromise not incorporated—Separate suit on compromise, if *lex*.

—Legal practitioner—Authority.

In the absence of a power of attorney a pleader is not

Mahomedan parties—Custom of adoption—Property both in British India and Native State—Adoption declared valid in Court in Native State—Dispute in respect of property in British India—Law applicable—English rule of *lex loci*—Applicability—Bombay Regulation IV of 1827.

A Mahomedan lady died leaving British India and in a Native State. A son was set up by the adopted son was de- by the Court in the Native State, a-

CONTEMPT OF COURT.

or rather of Bombay Presidency; for it is enacted in Bombay Regulation IV of 1827, that the law to be observed in the trial of suits shall be Acts of Parliament, etc., and in the absence of such Acts and Regulations, the usage of the country in which the suit has arisen. It follows that the personal law of the adopted son can only be taken into consideration in the absence of an usage of the country in which the suit has arisen (*s.v.*) British India. (*Barlee and Macklin, J.J.*) *AYUSHA v. BABALAL*.

I L.R. (1938) Bom 150=

39 Bom L.R. 1324=173 I.C. 801=

10 E.B. 384=A.I.R. 1938 Bom 111

—Parsi resident in Baroda dying having immovable properties in British India—Succession to such

interest through Government—Government, if guilty of contempt.

The Government granted certain lease of quarrying rights to A. A took possession of the quarries. In a dispute concerning lease the Government and its servants were restrained by an injunction from distur-

the order of the Court, and not for the Government, who was not in actual possession to eject B. The duty of the Government was to leave those who claimed entitled to the possession of the soil to take the appro-

, as Government was not liable, B, who rest through it, could also not be held dience. 16 Pat. 149=A.I.R. 1937 Pat 66 (S.B.), reversed. (*Lord Porter*.) UCHWAR LINE AND STONE CO., LTD. 1938 P.W.N. 895=19 Pat L.T. 867=178 I.C. 490=A.I.R. 1938 P. 296 (P.O.)

jurisdiction—Powers st aiding insolvent in y. See PRESIDENCY

43 L.W. 464=(1938) 2 M.L.J. 609.

—Power of Court to commit—Contempt.

Persons who are not parties to the proceedings can be proceeded against in contempt if they at the investigation of the insolvent refuse to vacate possession of the properties of the insolvent as ordered by the Court.

CONTEMPT OF COURT.

(Lord Porter.)

STONE CO., LTD.

— *What am.*
Court's order.

A Gujarati person applied for restoration of his minor boy from an Anglo Indian lady who looked after him for a long time with the father's concurrence. In a previous proceeding, the father was appointed as the guardian of the boy and the father was ordered to have the custody of his boy and was to arrange to take the child for a change. The father made the arrangement but the lady refused to deliver the child to its father in spite of many requests. The lady had acted in such a manner as to indicate clearly that she wanted to have an absolute control over the child in derogation of the rights of the father. Any amicable settlement suggested by the father was refused by her.

Held, that the lady was guilty of
 (McNair, J.) RANJANI KANTA PADIA, *Inf.*
 174 I.C. 785 = 39 Cr.L.J. 466 = 10 R.
 A.I.R. 193

— *Pending case—Newspaper article—Allegation of evidence in contemplated prosecution being unreliable and obtained by unfair means—Suggestion of improper means to obtain admissions from accused—Effect of—If amounts to contempt of Court.*

It is well settled that any act done or writing published which is calculated to interfere with or obstruct the due course of justice or the legal process of the Court is contempt of Court, although the Court will not take action for contempt unless it thinks that the conduct of the party in question is calculated seriously to interfere

calculated to interfere with the due course of justice, and amounts to contempt of Court, as such allegations introduced at once into the trial an element of prejudice against the prosecution evidence. (Beaumont, C.J. and Waddell, J.) GOVERNMENT PLEADER, BOMBAY v. SHANKAR DATTATRAYA JAVADEKAR.
 40 Bom.L.R. 73

— *Pending case—Newspaper headlines—Publication of complaint with comments.*

Where a newspaper published with scare headlines

CONTEMPT OF COURT.

misrepresentations directed on, especially when they are ed or contempt, is liable to because it may, in the case of discontinuing the action from may cause the defendant to

come to a compromise which he otherwise would not come to, for a like reason. The fact that the trial Judge would not be affected by the article has no bearing on the matter. An article published in a newspaper stated the defendants' case and inferred that it was true. It then accused the plaintiff of having ruined the defendants and of having concocted false criminal cases against them, and it further accused the plaintiff of using his influence maliciously and to the detriment of the defendants. The article was published pending a suit instituted by the plaintiff against the defendants.

Held, that the article constituted grave contempt, and that the fact that the article closed with an appeal for

VENKATAGIRI v. RAMA NAIDU

I.L.R. (1938) Mad. 545 = 1937 M.W.N. 1193 =
 173 I.C. 455 = 10 R.M. 589 = 39 Cr.L.J. 328 =
 48 L.W. 444 (2) = A.I.R. 1938 Mad. 248 =
 (1938) 2 M.L.J. 81.

— *Pending proceedings—Statements published—Grave offence—Punishable even if apology were tendered.*

(1) Where the contempt of Court is of a very grave nature, the party in contempt may be punished in spite of apology tendered. (2) There is nothing more incumbent upon Courts of justice than to preserve their pro

J. S. DAPATIA NAIDU v. DAPATIA.

1938 M.W.N. 1008 = A.I.R. 1938 Mad. 975 =
 (1938) 2 M.L.J. 520.

— *Pending suit—Resolution at public meeting making accusations against party—If amounts to contempt.*

Where during the pendency of a suit instituted for a declaration that certain land claimed by the defendant is a public pathway, a resolution is passed at a public meeting protesting against the attempt of the defendant,

CONTEMPT OF COURT.

—*Scandalising the Court—What amounts to—General attack hostile to utility of Courts of justice—Process for contempt—If justified.*

Any act done or writing published which is calculated to bring a Court or a Judge into contempt or to lower his authority is contempt of Court. It is a class of contempt usually known as "scandalising the Court", the principle on which the Court proceeds in taking notice of this class of contempt is based on the interest of the public and not on the interest of the particular Court or Judge who is attacked. Where attacks are made on the personal character of a Judge, or where base or improper motives in the decision of a case are attributed to a Judge, the process of the Court should be used, but the process of contempt for scandalising the Court is one which should be sparingly used. A general expression of opinion hostile to the utility of Courts of Justice, without any attack on any particular Judge or comment on any particular case, is not likely to affect the public and need not disturb the equanimity of Judges, and does not amount to such a contempt of Court as should be

CONTRACT.

Prohibition by statute.
Ratification.
Restitution.
Sale.
Special contract.
Stock exchange
Strangers' right to sue.
Third party.
Validity.
Variation.
Void and voidable.

—Bailment—Essentials of. *See* MYSORE CITY MUNICIPALITIES ACT, S. 41 (7).

IN Mys J. 388.

—Breach—Damages—Rule as to mitigation of damages—Applicability to contract of service, *See* PRINCIPAL AND AGENT—AGENT'S RIGHT TO SALARY. (1938) 1 M L J. 857.

—Concluded agreement—Mandi contract with *see* *ahrs of Bombay.*

contempt.

Where a suit was concluded by a decree of Court embodying the terms of settlement between the parties one of which was an undertaking given by the defendant not to dispose of his properties until the decree was fully satisfied, and the defendant mortgaged the properties before the satisfaction of the decree.

Held, that the breach of the Court amounted to contempt of Court as to be beneath the dignity of the Court to notice or punish it (*Panchridge, J.*) **HARI CHARAN DEV v. RANJIT KUMAR.**

42 O.W.N. 203

order to B at Bombay, who entered into a forward contract of April-May delivery at the current market rate, and the next day he wired back to the agent that the order had been placed at Rs. 208 12 0 per candy M A (mandi) premium of Rs. 7-8 0. Three days later, the

tion to another party at a loss.

Held, that there was no question of an "offer" by A and its "acceptance" by B. There was a completed contract between the parties and A was liable to pay the

tempt of Courts Act is that where there provision in the Penal Code for punishing a contempt

—*Construction—Contract of mother and minor*

Bailment.
Breach
Concluded agreement.
Construction.
Currency.
Enforceability.
Executory agreements.
Formation.
Hire purchase agreement.
Hypothecation.
Implied obligation to repay.
Part performance.
Penalty.

contracts and she was promising to stand in the role of one who should use her influence with her daughter to enable the company's expectations in respect of the daughter to be realized. The company advanced money to be adjusted against her future earnings. The daughter failed to carry out the contract:

Held, (1) that the minor daughter was not liable under the contract but her mother was liable on her

measure of damages. (*Roberts, C.J. and Dunkley, J.*)

CONTRACT.

DAW NYUN v. MAUNG NYI PU.

A.I.R. 1938 Rang. 359.

—Construction—Contract of service entered into in London—Employment in New Zealand on remuneration of seven hundred pounds sterling per year—Payment, if to be made according to English or New Zealand currency.

An agreement was entered into between the respondent and the appellant in London under which the

lish or the New Zealand value of the pound.

Held, that the question was purely one of construction of the particular contract. The word "sterling" was to be construed as signifying English currency, in contrast with the currencies of other countries, and particular with that of Australia or New Zealand.

volume as his property and also reserved to himself all

177 I.C. 341—11 E.L. 300—

—Construction—Intention contracts for supply of goods—Part of a series

The plaintiff and defendant

CONTRACT.

export vessel in port—Goods delivered to ship and Mate's receipt taken by seller in buyer's name—Bills of lading, issued to buyer without Mate's receipt but on letter of guarantee by buyer—Non-payment of price—Buyer endorsing bills of lading—Delivery to endorse—Claim by seller to damages against shipping company—Maintainability—Property—When passed.

On 4-5-1926, the respondents, who were brokers and

contained, *inter alia*, the following material terms: (1) "Payments to be made in cash in exchange for delivery order on sellers or for Railway receipts or for Dock receipts or receipts or Mate's receipts (which Dock receipts or

appellants, who received the goods and issued Mate's receipts as presented to them for signature by the mills. The receipts recited that the goods mentioned therein were received for conveyance to Kobe from the Export Company. The receipts were handed over to the mills.

same date later against payment and tendered them to
There-
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bills of

appellants.

Held, (1) that the property in the goods sold passed when the goods were appropriated by delivery alongside in implement of the contracts, (2) that the self

PRASAD SHEO PRASAD BHAGAT. 1937 A.L.J. 1250

—Construction—Sale of goods—Payment to be made in cash in exchange for delivery order on seller for Mate's receipts—Stipulation for delivery alongside

CONTRACT.

had parted with property and possession after delivery alongside, and had nothing left except the equitable charge which could be enforced only against the buyer or persons taking with notice of the equity; (3) that there was nothing left in the sellers-respondents in the nature of a common law or possessory lien which would support an action in conversion or trespass, (4) that the appellants in issuing bills of lading without Mate's receipts did not commit any wrong as against the respondents and were not guilty of any breach of duty, (5)

could give the respondents any right to damages in trespass or conversion, and (6) that the equitable lien or personal license which was all that remained with the respondents under the contract when the goods were delivered to the ship, did not affect the transferee of the bills of lading so as to found a claim for conversion, though it might found a claim for breach of contract.

How determined.

The currency in any particular country must be determined by the law of that country and that law is naturally in favour of the defendant.

mined. (Lord Wright.) OTTOMAN BANK OF NICOSIA v. OHANES CHAKARIAN.

172 I.O. 786—10 B.P.C. 141—
A.I.R. 1938 P.C. 28 (P.C.).

—*Enforceability—Legal and illegal objects—Duty of Courts.*

Per *Vincent Best, J.*—Where a transaction consists of two separate considerations for consisting of legal and illegal parts is separable from unlawful, it is all effect to the lawful and reject the unlawful. What the Courts are bound to do is to enforce a transaction is prohibited by statute or unless it involves

deed.

It is well settled that where parties enter into an executory agreement which is deed afterwards to be executed, contract is to be found in the deed merged in the deed. The main purpose of this merger is a contract for the sale of land followed by conveyance on the provisions of the contract which the deed is to be performed by the conveyance, and all the rights of title thereto are thereby satisfied.

CONTRACT.

doubt, be provisions of the contract which from their nature or from the terms of the contract, survive after completion. (Lord Russell.) THE KNIGHT SUGAR CO., LTD. v. ALBERTA RAILWAY AND IRRIGATION CO.

10 B.P.C. 192—173 I.O. 88 (P.C.).

—*Formation—Offer and acceptance—Counter offer—If amounts to rejection of offer.*

Where an offer containing certain conditions has been made to a party and that party by adding to the conditions makes a counter-offer, the counter offer made to him. RAO GIRDHARI

1, 1938 Lah 341.

—*Renunciation—Letter to member offering new shares to him and on his renunciation, to his nominee—Renunciation by member and acceptance by nominee—Contract if concluded.*

A letter addressed to a member of a company offered him new shares and in the event of his renouncing, to his nominee. The member renounced and his nominee accepted them.

contract of sale.

Where the plaintiff accepts the offer of the defendant to sell but seeks to add a further term, which the defendant refused to consider at the same time made, and inaction of the defendant. RALS, LTD.

174 I.O. 544—11 B.P.C. 258—
A.I.R. 1938 Cal. 348.

—*Hire agreement—Fitness of article for purpose required—Implied warranty.*

As a general rule, if a person contracts for the hire and use of a specific article, there is no implied warranty by the owner that it is fit for the purpose for which it is hired.

174 I.O. 540—11 B.P.C. 258—
A.I.R. 1938 Cal. 248.

—*Contract of—Con-*

on account of
The terms used
and equivocal

that they are calculated to elude an attempt to gather their intention from them. A hire purchase agreement is to be described as a

hire and agreement of hypothecation of bottom may well be a contract of sale on credit. The main point in

CONTRACT.

appropriate relief. The question whether or not the agreement which wears the garb of hire purchase agreement transfers by its own force the ownership from one party to the other is one of great moment for the purposes of determining the nature and extent of the remedy that is available to the aggrieved party. If it is found that the agreement is a contract of sale with the condition of retarded payment of the price by instalments, the property in the chattel would be in the hands of the purchaser. If on the other hand it is one of hiring, albeit coupled with an option to purchase, the property will not pass to the hirer but he will be treated only as a bailee until he exercises his option after having fulfilled the required conditions. In the former case the owner who has parted with his ownership is entitled to sue the purchaser for the balance of the price as a debt owed to him. In the latter case he may sue for the chattel or sue for recovering the arrears of hire money or for damages as a consequence of the breach of the agreement.

whole and would also serve to shed light on the intention of the parties as to the time of the transfer of ownership from one party to the other. (*Niyogi, J.*)

plating a visit to Kathiawar where his home was and he requested *D* to purchase on his account out of the

another note to *D*.

Calcutta and also because the other Government promissory note on which interest was due, was taken away by *P* along with his other documents. The promise to send another paper in return could only be interpreted as an admission that *D* was entitled to the protection afforded by the hypothecation and possession of a Government

CONTRACT.

security for dues from *P.* (*Panchridge, J.*) **RAMNATH v. CHANDULAL.** A.I.R. 1938 Cal. 649.

—Implied obligation to repay—Plaintiff's money forfeited for defendants' dues—Right to recover.

Where a portion of the amount deposited by the plaintiff was appropriated by Government for the satisfaction of a debt due from the defendants, it is not a case of any voluntary payment by the plaintiff, but of a payment made under compulsion.

As the defendant, an impleader, has not shown that the plaintiff has received the amount, the plaintiff is entitled to recover it.

(*Idem A*)

—Part performance—Appropriation—Maintenance decree creating charge on immovable property—Transfer of property by defendant—Debt—Agreement

covenant in the sale deed provided that the vendor should pay the assessment on the land and in case he committed default in any year the vendee or his heirs

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A.I.R. 1938 Nag 333 (F.B.).

—Ratification—Requirements See HINDU LAW—JOINT FAMILY—ALIENATION—MANAGER

A.I.R. 1938 Nag 482

—Restitution—Illegal contract—The rule and the exception

CONTRACT.

had parted with property and possession after delivery alongside, and had nothing left except the equitable charge which could be enforced only against the buyer or persons taking with notice of the equity; (3) that there was nothing left in the sellers-respondents in the nature of a common law or possessory lien which would support an action in conversion or trespass, (4) that the appellants in issuing bills of lading without Mate's receipts did not commit any wrong as against the respondents and were not guilty of any breach of duty, (5)

could give the respondents any right to damages in trespass or conversion, and (6) that the equitable lien or personal license which was all that remained with the respondents under the contract when the goods were delivered to the ship, did not affect the transferee of the bills of lading so as to found a claim for conversion, though it might found a claim for breach of contract.

ity must be determined that law is applicable.

foreign Court will, when such questions come before it, give effect to the proper law of legal tender so determined. (*Lord Wright*.) OTTOMAN BANK OF NICOSIA v. OHANES CHAKRIAN.

172 I.C. 786—10 B.P.C. 141—A.I.R. 1938 P.C. 28 (P.C.).

Enforceability—Legal and illegal objects—Duty of Courts.

Per *Vivian Bose, J.*—Where a transaction consists

under the law and reject the unlawful, in fact that is what the Courts are bound to do unless the whole transaction is prohibited by statute or unless it involves serious moral turpitude. (*Stone, C.J., Bos.*) LUDHESHWAR.

Executory agreement—Such agreement to be carried out by subsequent deed—Contract, if merged in deed.

It is well settled that where parties enter into an executory agreement which is to be carried out by a deed afterwards to be executed, the real completed contract is to be found in the deed. The contract is merged in the deed. The most common instance perhaps of this merger is a contract for the sale of land followed by conveyance on commission. The provisions of the contract which the deed performed by the conveyance, and all the rights of action thereto are thereby satisfied.

CONTRACT.

doubt, be provisions of the contract which from their nature or from the terms of the contract, survive after completion. (*Lord Russell*.) THE KNIGHT SUGAR CO., LTD. v. ALBERTA RAILWAY AND IRRIGATION CO.

10 B.P.C. 192—173 I.C. 83 (P.C.).

Formation—Offer and acceptance—Counter-offer—If amounts to rejection of offer.

Where an offer containing certain conditions has been made to a party and that party by adding to the conditions makes a counter-offer, the counter-offer made to him. RAO GIRDHARI

1938 Lab. 341.

Offer—Letter to member offering new shares to him and on his renunciation, to his nominee—Renunciation by member and acceptance by nominee—Contract if concluded.

A letter addressed to a member of a company offered him new shares and in the event of his renouncing, to his nominee. The member renounced and his nominee accepted them.

contract of sale.

Where the plaintiff accepts the offer of the defendant to sell but seeks to add a further term, which the defendant refused to consider at the same time and of

defendant. (*Lord Williams, J.*) PACIFIC MINERALS, LTD. v. SINGBHU MINING SYNDICATE.

177 I.C. 624—11 B.C. 258—A.I.R. 1938 Cal. 348.

Hire agreement—Fitness of article for purpose required—Implied warranty.

As a general rule, if a person contracts for the hire and use of a specific article, there is no implied warranty by the owner that it is fit for the purpose for which it is hired to deliver it in the

and efficiency for his purpose. (*Lord Williams, J.*) BHARAT BIKASH HALDER v. BHARAT LUXMI PICTURES.

177 I.C. 640—11 B.C. 262—A.I.R. 1938 Cal. 248.

agreement—Nature of—Con-

agreements are, on account of their complexity, not easy to construe. The terms used by the parties are frequently so obscure and equivocal that they are calculated to elude an attempt to gather their intention from them. A hire purchase agreement is ordinarily so complex that it may be described as a compound of agreement of hiring and agreement to sell tinged with an agreement of hypothecation. With all these, at bottom may well be a contract of sale on credit. The main point in

CONTRACT.

appropriate relief. The question whether or not the agreement which wears the garb of hire purchase agreement transfers by its own force the ownership from one party to the other is one of great moment for the purposes of determining the nature and extent of the remedy that is available to the aggrieved party. If it is found that the agreement is a contract of sale with the condition of retarded payment of the price by instalments, the property in the chattel would pass to the ostensible hirer. If on the other hand the agreement is one of hiring, albeit coupled with an option to purchase, the property will not pass to the hirer but will be treated only as a bailee until he exercises the option. After having fulfilled the required conditions in the former case the owner who has parted with his ownership is entitled to sue the purchaser for the balance of the price as a debt owed to him. In the latter case he may seize the chattel or sue for recovering the arrears of hire money or for damages as a consequence of the breach of the contract. To construe a hire-purchase agreement, one must look into the language used by the parties to the agreement as to the time of the transaction of the property in the subject-matter of the agreement. If the agreement embodies a stipulation which entitles the hirer to terminate the contract at any time

the parties as to the time of the transaction of the property in the subject-matter of the agreement. If the agreement embodies a stipulation which entitles the hirer to terminate the contract at any time

—Hypothecation—Proof—Deposit of Government promissory note.

During a visit to Madras at which his home was and he requested D to purchase on his account, out of the money that was lying with D, two Government promissory notes. The notes were purchased through a broker by D. The interest had not been drawn by the sellers of the note when they were purchased by D on P's account. Subsequently when P was about to leave for he obtained from D all the postal securities deposit receipts held by D and also one of the Government promissory notes which had been purchased. Another note remained with D. P at that indebted to D for certain amount. Subsequently P

another paper in return could only be interpreted as an admission that D was entitled to the protection afforded by the hypothecation and possession of a Government promissory note of a similar issue and denomination as the one which P was asking for. In these circumstances the terms on which D retained the Government promissory note were not that D should keep it for safe custody and collection of interest but that he should hold it as

CONTRACT.

security for dues from P. (Panchridge, J.) RAMNATH v. CHANDULAL. A.I.R. 1938 Cal. 649.

—Implied obligation to repay—Plaintiff's money forfeited for defendants' dues—Right to recover.

Where a portion of the amount deposited by the plaintiff was appropriated by Government for the satisfaction of a debt due from the defendants, it is not a case of any voluntary payment by the plaintiff, but of one of appropriation without his consent. As the defendants obtained the benefit of the appropriation, an implied obligation to repay arises.

174 I C 900=1938 R 494=
1938 A L R 319=10 R A. 635=
A.I.R. 1938 All 206.

—Part performance—Applicability—Maintenance decree creating charge on immovable property—Transfer of property by judgment-debtor—Agreement between decree holder and alienor for release of property.

over it—Covenant in sale deed providing that in case of default by vendor to pay assessment on land vendee by paying it should be absolute owner of property—If penal—Relief against.

owner of land sold mining rights over it. A covenant in the sale deed provided that the vendor should pay the assessment on the land and in case he defaulted in any year the vendee or his heirs should be entitled to hold and possess with full and absolute rights the property in respect of which such payment had been made. The vendor committed default in the payment of the assessment. The vendee sought a declaration

in *terrorem* and in the nature of a penalty which was out of proportion to the possible injury which the vendee might have suffered by reason of the non-payment of assessment. The covenant therefore should be relieved against. (Pandurang Row and Venkataramana Rao, J.)

because prohibited by statute the Court has power to

—Ratification—Requirements See HINDU LAW—JOINT FAMILY—ALIENATION—MANAGER

A.I.R. 1938 Nag 482.

—Restitution—Illegal contract—The rule and the exception.

Per Viswan Bhatt, J.—When a contract is void as illegality as opposed to being merely nugatory, the property paid or goods delivered in pursuance of the contract ordinarily be recovered unless it is shown that the maxim *ex turpi causa non oritur actio* applies.

CONTRACT.

direct restitution is not founded on Contract Act but is because of this policy, *ex turpi causa, in pari* (Stone, C.J., Bose and Digby LUDHESHWAR.

177 I.C. 6=11 B.N. 109=
A.I.R. 1938 Nag 335 (F.B.).

—Sale—Contract to sell—Failure to disclose mortgage—Vendee not completing—Right to damages.

The case of a vendee stands on a different footing from that of a person who is only bound by contract of sale

contract of sale the party agreeing to sell does not disclose the existence of mortgage on the property, even if the mortgage was a registered one the party agreeing to purchase cannot be saddled with constructive knowledge

(Niyogi, J) MT. SUNDARA BAI v. PANDHARINATH.
177 I.C. 945=A.I.R. 1938 Nag. 441.

—Sale—Time, if essence of contract—Price to be paid in one month—Acceptance of instalments beyond the month.

Where a contract for sale is made on the basis of instalments

—Special contract with company in terms of or embodying Article of company to COMPANY—ARTICLE.

—Stock ex. must return for his client specific shares purchased.

A stockbroker is not considered to be under an obligation

Atkin) W.C. v. ...

—Strict performance. Even if

B promises to pay C, can be enforced in a suit brought by C against B, it certainly does not follow that B's failure to pay to C will give a right of action to B

CONTRACT.

—Third party—Right to enforce—Rule in Tweddle v. Atkinson—Extent of applicability.

The English common law doctrine laid down in Tweddle v. Atkinson that a contract can create no

can be founded on the contract. Though the applicability of the rule in Tweddle v. Atkinson to Courts in India has been the subject of considerable discussion, opinions expressed have by no means been uniform. A general statement that where a person makes a contract with another for the benefit of a third person, that third

—Third party—Right to enforce—Undertaking by under-tenure-holder to tenure-holder to pay Zamindar rent due from latter—Zamindar's right to sue thereon.

A third party cannot sue on a contract made by others

tenure-holder, does not create a trust in favour of the Zamindar. Nor can it be said that the tenure-holder received the promise from the under-tenure-holder as agent of the Zamindar. The Zamindar cannot, therefore, on the basis of the kabulyat sue the under-tenure-holder for the rent of the tenure. The fact that the

ing rent from the name of intended to (Nasim Ali v. KIRAN J.W.N. 1212.

—Contracting insurer against third

right to enforce legal rights of insured

A stranger to a contract cannot sue on the contract, and a person who has suffered injury or damage for which the insured was a contract of insurance is liable, the policy of against either

the insured or the insured's estate

because such a clause is merely an agreement between the insurer and insured and does not add to the rights of the insured against third parties

—basis of a clause in the policy of insurance, under

CONTRACT.

which the insurance company is obliged to pay the legal rights of the victim of the accident, under an implied

INSURANCE CO., LTD. v. JANARDAN.
40 Bom L R 155 = 175 I C 104 = 10 B B. 522 =
A.I.R. 1938 Bom 217.

—Validity—Document insufficiently stamped—
Effect.

The fact that a hire purchase agreement is insufficiently stamped does not render the document void.

cannot have the effect of changing the operation of an unambiguous agreement, though it might possibly in special cases support, along with other appropriate evidence, a claim for reformation on the ground of mistake.

—Varieties

by consent—See

contractor—Work done by contractor—W.—at reasonable rates.

Where the original schedule of contractor fixed under a contract by and the contractor was abandoned both the parties and the new enhance

Received 10/12/2011; accepted 10/12/2011.

The Contract Act does not draw fine distinctions between different classes of agents, but the Act is not exhaustive and so far as the law relating to agency is concerned, it merely lays down general principles.

CONTRACT ACT (1872), S. 16.

parties, is 'consideration' within the definition of S. 2 (d) of the Contract Act. (*Western*) KUTUB UDDIN v. DEO KARAN. 1937 A.N.L.J. 110.

—§ 2 (d) —Consideration —Original contract between parties a wagering transaction —Forbearance of plaintiff to sue and declare defendant defaulter —If

—§. 12—Sust to avoid deed on ground of insanity—Scrutiny of pleading and evidence—Necessity—Absence of—Scrutiny—Finding if binding in second

in cases of undue influence are put in the wrong order. The first thing to be found is whether the party who is said to have induced the contract was in a position to dominate the will of the other. After that the question arises, has the contract been so induced? Inadequacy

CONTRACT ACT (1872), S. 23.

—S. 23—*Agreement between priests partitioning disciples—Validity.*

An agreement between two priests by which certain disciples were specifically allotted to each of them with

Consequently is not HUDI-
1038.

held, that the agreement was unconditional and therefore invalid, (Goldstream and Abdul Rashid, Jf.) ALOPI PARSHAD v. COURT OF WARDS.

A I.B. 1938 Lah. 23.

—S 23—If affects leaser Grants Act, See CROWN GRA

—S. 23—*Immoral contract tenance to past mistress—If opposed to public policy.*

An agreement by a person to a sum of money every month long as she remained outcaste being nothing in the agreement

CONTRACT ACT (1872), S. 23.

(Fort and Manohar Lall, Jf.) KAMESHWAR SINGH v. MD. YASIN KHAN. 17 Pat. 255 =

A I.B. 1938 Pat 473.

—S. 23—Public policy—Contract of betrothal in of Hindu bride and bride-age brokerage contract. See 1937 M.W.N. 1274.

—S. 23—Public policy—Government opening telegraph office at particular place at request of certain persons—Contract with them for meeting deficit in its working expenses—Validity.

Where Government open a telegraph office at a particular place at the request of certain persons in that

public policy—Mortgage executed by of surety for amount forfeited by

ied security for the appearance of the date before the Magistrate There

express or implied, made between him and the accused at that time that the accused would subsequently reimburse him for such amount as might be forfeited. The security bond was subsequently forfeited as the accused failed to appear on the fixed date. Three

—S. 23—Public policy—Bond executed to

CONTRACT ACT (1872), S. 23.

—S. 23—*Stifling prosecution—Test—Motive and object of agreement—Distinction.*

It is against public policy to make a trade of felony or attempt to secure benefit by stifling a prosecution or compounding an offence which is not compoundable in

The test to be applied in all such cases is, as to whether it was an express or implied term of the bargain between

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ment coming to him for withdrawing the prosecution against his debtor. When security is given by an outsider, who is under no existing obligation, the consideration could be nothing else but withdrawing of the criminal case, and as such the security is not entertainable in law. The position is that if the pre-existing liability of the debtor was the sole consideration for the security which he gives, the transaction will be protected even if it were given under threat of criminal proceedings, but if the dropping of prosecution was also a matter of bargain between the parties, and constituted a part of the consideration apart from the pre-existing debt, the security cannot be enforced in law. (*Derbyshire C.J. and Mukerjee, J.*) SUDHINDRA KUMAR v. GANESH CHANDRA 43 W.N. 147 = A.I.R. 1938 Cal 840

—S. 25—*Acknowledgment without express promise to pay—Effect of.*

Mere acknowledgment of liability without any express promise to pay or without any reference to the future liability to pay does not fit of S. 25 (*Jai Lal and Dalip Si.*) NATH GOELA v. BAJI NATH.

—S. 25—*Implied promise to pay—Sufficiency.*

Mere implied promise to pay is not sufficient for the purposes of S. 25. More than three years from the last item of account the balance was struck and signed by the debtor. The entry however contained no words

CONTRACT ACT (1872), S. 25.

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178 I.C. 446 =

A.I.R. 1938 Lah 155.

—S. 25 (2)—*Applicability—Contract by minor—Ratification on attaining majority.*

A contract entered into by a minor, being null and void, cannot be ratified by the minor on attaining majority. The consideration of the contract cannot be im-

ported into the contract into which the minor entered on attaining majority. S. 25 (2) has no application to the contract of this kind. (*Din Mohammad, J.*) NAZIR AHMAD v. JIWAN DAS. 177 I.C. 388 = 11 E.L. 307 = A.I.R. 1938 Lah. 159.

—S. 25 (3)—*Agreement to pay barred debt—*

When a promise to pay falls under S. 25 (3) of the

A.I.R. 1938 Lah. 234 (F.B.).
—S. 25 (3)—*Money bond to pay off father's time-barred debts—Extent of liability.*

Where the petitioner enters into a money bond not to raise personal loan but only to pay off his deceased father's time barred debts, a decree on the bond can be passed only against the estate of the deceased in his hands, but no personal decree can be passed against the petitioner (*Din Mohammad, J.*) NAZIR AHMAD v. JIWAN DAS 177 I.C. 388 = 11 E.L. 307 = A.I.R. 1938 Lah 159

—S. 25 (3)—*Promise to pay—Basis of suit.*

When a promise to pay falls under S. 25 (3) of the Contract Act, it constitutes a valid agreement for the purpose of suit—where the promise is for the promise debts covered (*Beckett, J.*)

A.I.R. 1938 Lah 757.

—S. 25 (3)—*Promise to pay—If to be expressed—*
from acknowledged agreement—Suff.

25 (3) of the Contract Act, promise as opposed to an un-
ment involving an implied
promise to pay. Where the writing relied upon was to the effect "A balance is struck The said Rupees,, are found due. The same are payable," and the Gujarati words were "baki nikhya te deva sahi"
Held, that the words could not be interpreted as

CONTRACT ACT (1872), S. 27.

—S. 27—Monopoly—License by Zamindar entitling licensee to collect exclusively bribes of all dead animals within Zamindari—Enforceability. See CONTRACT ACT, S. 23 17 Pat. 255.

—S. 30—Mandi contracts—Validity.

'Mandi' contracts cannot be held to be unenforceable on their apparent nature proof of the facts that the trading parties at the time the contract in question was made and in no circumstances to call for, or give, delivery. (Teh Chand, J.) LAKSHMI NARAIN v. BALA PRASHAD A.I.R. 1938 Lah. 825.

—S. 30—Wagering contract—Speculative transaction—If amounts to.

Speculation does not necessarily involve a contract by way of wager, and to constitute such a contract a common intention to wager is essential. Even if to a contract were a speculator who never intended to give delivery, and that fact was known to the party, yet in the absence of any express or implied, that delivered, that would not convert an innocent, into a wager, nor to the greater part of the but an adjustment of claim.

Where therefore although the parties were speculative evidence showing that the differences only, or that there was no intention to take

CONTRACT ACT (1872), S. 43.

decree against the judgment debtor for the amount due on the preliminary decree and at the same time he prayed for execution against the surety. He was unsuccessful in serving notice upon the surety.

Held, that from the mere fact that the plaintiff mis-

—S. 43—Scope and effect of—Ex partners—Joint decree against ex-partners and as well as heirs—Discharge of debt by the heirs of ex partner—Suit for contribution against other ex partners and heirs—Maintainability—Decree against Hindu partner and as well as shares of son and grandson in family property in respect of partnership debt. Prabhoo v. J. S. & Co. 1938 Pat. 13.

partnership relation no longer exists and there is no

—S. 39—Acquiescence—What may not amount to—Preliminary decree in mortgage suit—Subsequent compromise—Default in carrying out terms.

In a mortgage suit a preliminary decree fixing the amount due to the plaintiff was passed. Subsequently by a compromise it was agreed that the plaintiff should accept the mortgaged property at valuation less than the amount fixed in the preliminary decree and in addition to this, the judgment debtor was to pay certain sum on or before a fixed date. A surety was furnished for the due payment of this additional sum.

On conveyance of the property and the additional sum, the plaintiff should no personal decree but in default of the payment he was free to enforce the decree in the usual manner. On default in the payment the plaintiff asked for a personal

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(1) that the plaintiffs were entitled to invoke the equitable rule as to contribution between joint judgment debtors and to recover from the defendants their shares

CONTRACT ACT (1872), S. 45.

of the decree debt; (2) that the Hindu Law doctrine of pious obligation of sons to pay their father's debt does not stand in the way of the plaintiffs' claim for contribution. (*Pandurang Row, J., on a difference of opinion between Madharan Nair and Stone, J.*) CHOC - LINGAM CHETTIAR v MEYVAPPA CHETTIAR.

48 L W. 383-1938 M.W.N. 1041-
(1938) 2 M L J 287

—S. 45—Joint mortgagees—Suit by one—Maintainability.

Where on the death of one of two joint mortgagees, the survivor alone sued on the mortgage.

Held, that the suit was defective owing to the non-joinder of the legal representatives of the joint promisee. (*Weston.*) HAMIR SINGH v. AMAR CHAND

1937 A M L J. 118.

—S. 49—Duty of promisor under—Failure to apply to fix place—Effect—Right of creditor to demand payment at his own place. See C. P. CODE, S. 20 c)

48 L W. 438

—Ss 59 to 61—Appropriation—Contrary to stipulation in mortgage deed—Validity.

Where there is the definite stipulation in the mortgage deed that the money paid is to be appropriated, in the first instance towards payment of interest and the balance set-off against the principal due, the mortgagee must in such a case apply the money received in accordance with the provisions of the mortgage deed. He cannot appropriate such payments towards principal. For purposes of income tax, the authorities are certainly entitled to assume that a creditor's payments only in accordance with the debtor (*Derbyshire, C. J.* and *GOBINDRAM, In the matter of.*

A I R 1938 Cal 20

—Ss 59 to 61—Appropriation—Rule as to—If applies to agreement regulating order of payment

the payment otherwise than in respect of the debt to

This doctrine, it is entered into payment of instalment. (*C. J.* and *IDRY v RAMA*—4 B R. 220—

10 R P 379—A I R 1938 Pat 8.

—S. 60—Appropriation—Portion of debt not binding on joint family—Realisations—Method of appropriation

Where a portion of the joint family debt arising from an immoral purpose of a creditor is not out of the sale of debt but only towards the portion for lawful purpose (*Bennet and Verma, J.*)

176 I 619-1
1938 A W R

—S. 60—Several

debtor—If one paid he latter is not liable to pay the rest

CONTRACT ACT (1872), S. 53.

(*Bennet, Mohammad Ismail and Verma, J.*) KAN-
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—S. 62—Proposal to discharge debt by executing mortgage—If constitutes novation.

If there is a proposal to discharge a debt by executing a mortgage but the right of reverting to original position is reserved unless the new transaction is complete, there is no true novation and there is no bar to a suit on the original cause of action. (*Beckett J.*) KISHEN LAL v. GOHLI 40 P L R. 689 = A I R. 1938 Lah 757.

—S. 64—'Re-cinds'—Interpretation.

The word 're-cinds' as used in S. 64, Contract Act, implies an "express and unequivocal cancellation of the contract." Where a domestic servant employed as a sweeper of the house leaves his master without any notice and the master does nothing except engaging another person for doing the work the contract with the former servant is not necessarily re-cinded by the master and hence the servant is not entitled to get the pay for the work done. (*MacKenney, J.*) ELBARI v. BELLAMY. 176 I O 526 = 11 R. R. 54 = A I R. 1938 Rang 207.

—S. 65—Applicability.

Per *Vissan Bose, J.*—S. 65 applies to agreements which have been void from their inception as well as to contracts which became void subsequent to their making.

Per *Pichu J.*—S. 65, Contract Act, does apply to which are void by reason of illegality. (*Bose and Digby, J.*) ASARAM v. 177 I O 8 = 11 R N 109 = A I R 1938 Nag 335 (F B).

—S. 65—Applicability—Contract void from inception.

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—S. 65—Applicability—Lease invalid for non-compliance with Ss 44 and 69, Madras District Municipalities Act—Suit on—Right to relief. See T. P. ACT, Ss. 105 AND 107. 47 L W 668.

—S. 65—Applicability—Transfer amounting to transfer of occupancy rights—Transfer avoided—Transfer to co-sharer, if can sue under S. 65

Where an occupancy tenant executes a deed of surrender in respect of a field amounting to a transfer of the share in the field to a co-sharer, whatever remedies he may have against the transferring tenant, is not entitled to recover under S. 65, Contract Act, from the landlord the amount of the consideration paid by him. Having knowingly entered into a voidable transaction, he cannot be allowed to set aside the same. (*Bennet and Verma, J.*)

CONTRACT ACT (1872), S. 65.

S. 65—Assignment of mortgage rights—Mortgage declared void—Liability of mortgagee to refund consideration to assignee.

S. 65—Money belonging to plaintiff wrongly obtained by defendant under contract with another person—Latter not held out by plaintiff as agent—Plaintiff's right to recover amount

Where money belonging to the plaintiff was wrongly obtained by the defendant from another person under a

CONTRACT ACT (1872), S. 68.

estate. Such money is paid as a guarantee or security for the performance of the contract which in law is no contract at all. It cannot be regarded as having been paid to the guardian for necessities or benefit of the minor. S. 68 of the Contract Act does not apply, and the vendee cannot therefore recover it under S. 68 or under the benefit of the

—48 L.W. 112=

1938 Mad 765=

(1938) 2 M L J. 277.

S. 68—Applicability—Money advanced to guardian—Liability of minor—Burden of proof—Duty of creditor.

In a case where a creditor seeks to make the estate of the minor liable for advance made for necessities (including in term advances made for necessary purposes), mere *bona fide* enquiry by the creditor into the existence

supplied to an infant, the

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(=A I.R. 1938 Nag. 65.

proved, own not only that the on goods suitable to the but also that they were ments at the time of sale fant for the purpose of stand in the position J. and Dunkley, J.)

A.I.R. 1938 Rang. 359

S. 68—Liability of minor under transaction by guardian—Test of—Alienation by guardian—Distinction.

It is one thing to lay down set of rules with respect to

proper" can be applied in both cases, but the must necessarily differ for what is fair and in the shape of benefits conferred or comforts

—Recovery of money advanced—Cause of action—Starting point.

When a transfer is void owing to a so that a cause of action to recover it under S. 65, Contract Act arises, time from the date of the agreement. (S. Clarke, J.) GULAM HUSSEIN v. MIR JAKIRALI. 1938 N.L.J. 409

S. 68—Applicability—Hindu minor—Contract by guardian to sell land and receipt of earnest money—Sale not completed—Right to recover earnest money from minor's estate.

A covenant by the guardian of a Hindu r immovable property of the minor cannot

CONTRACT ACT (1872), S. 68.

supplied, may not be fair and proper in the case of an alienation. One important point of distinction between the two classes of cases is this in the case of an alienation where necessity is alleged, enquiries made in good faith protect the transferee, whereas in the case of necessities such considerations are irrelevant. Then again an alienation by a minor would be void whatever the purpose for which it was made, but in the case of necessities supplied to him it is immaterial whether the order comes from him or from his guardian, in both the cases the test is precisely the same: the goods supplied, or the benefits conferred to the social status and condition in and in his actual requirements at transaction. (*Vivian Bose, J.*) **SADASHIBU BALAJI v. HIRALAL RANGOPAL.** 175 I O 149 = 10 R N. 437 = A I.R. 1938 Nag 65.

S. 68—"Necessaries"—Meaning of—If confined to goods.

The term 'necessaries' is not confined to goods. It can include other things such as good teaching and instruction whereby the minor may profit himself after wards, and also money to enable him to obtain these necessities. For example, the term includes costs incurred in defending a suit to save the minor's property and to defend him in a criminal prosecution, so also reasonable marriage expenses of a minor himself or a sister or other coparceners and such religious ceremonies as the minor would have had to perform if he had been an adult. (Case law referred).

But where a guardian of a Hindu money for Divali expenses,

Held, that the amount would not be necessary (*Vivian Bose, J.*)
v. HIRALAL RANGOPAL

10 R N 437 = A I.R. 1938 Nag 65

Ss. 69 and 70—Applicability—"Bound by law to pay"—Meaning—Purchaser of mortgaged property free of encumbrance—Vendor agreeing to pay off encumbrance—Assignee of debts from vendor's widow under taking to pay encum.

Non payment—Suit by purchaser to assignee of debts for Privilege of contract

C purchased certain properties from A, free of encumbrance, the properties were subject to a mortgage

Appellant did not however, discharge the debt of N, who therefore sued on the mortgage and obtained a decree for sale, in execution of which he brought the properties to sale C, in order to save his properties,

CONTRACT ACT (1872), S. 69.

cannot be interpreted as an obligation under a contract and not under law. The expression does not mean bound by law to the plaintiff, but that the defendant at the suit of any person might be compelled to pay. (*Abdul Ghani and Nagarwara Iyer, J.J.*) **RANGE GOWDA v. THIMME GOWDA.**

16 Mys L.J. 27 = 42 Mys H.C.R. 837.

S. 69—Applicability—"Interested in the payment, etc."—Meaning of—Hindu reversioner—Payment of Government revenue to avert revenue sale of estate—

ate of the last male present interest in er, yet it is manifest that he is substantially interested in the protection of the estate or its devolution. Consequently a reversioner who pays kandyam due to the Government from the estate in order to prevent it from being sold for non-payment of the kandyam by the limited owner or an alienee from the life estate holder, is entitled under S. 69 of the Contract Act to claim reimbursement of the amount paid by him from the defaulter. (*Shankaranarayana Rao and Abdul Ghani, J.J.*) **NAGABHUSHANA BHATTA v. VISVESWARIAH.**

16 Mys L.J. 399 = 43 Mys H.C.R. 857.

S. 69—Applicability—Mortgagee paying off decree for arrears of land revenue to avert sale.

There is no reason why a person legally bound to pay should be held to be not a person who is interested in

on the mortgagor, so long as the mortgagee is not in possession of the mortgaged property, the duty of paying all public charges accruing due in respect of the property. As between the mortgagee and the mortgagor, the latter is primarily bound to pay the arrear and when the mort-

Ss. 69 and 70—Applicability—Sale by Hindu widow—Discharge of personal debts of husband and of debts of husband—Right of husband—Right to make re-discharged debts, estate of her husband, for discharging purely personal money debts of her husband or debts contracted by her to perform the funeral rites of her deceased husband, the purchaser cannot rely on Ss. 69 and 70 of the Contract Act and claim from the illegitimate son of the deceased husband.

and Singaravatu Mudalsar, J.J.) **CHIKKANNA v. NANJUNDA.**

16 Mys L.J. 184 = 43 Mys H.C.R. 105.

S. 69—Cotenant paying rent—Right to counter-claim.

received consideration for the promise, that C, was not liable to pay the debt in question, but was merely interested in discharging it, and that the case was governed by S. 60 of the Contract Act, if not by S. 70 as well. The expression "bound by law to pay" in S. 60

CONTRACT ACT (1872), S. 70.

Where in a suit for contribution between co-tenants, the defendant co-tenants prove an agreement between them and the plaintiff, whereby the plaintiff alone had agreed to pay the entire rent due from the co-sharers jointly, the plaintiff is not entitled to claim contribution in respect of the rent paid by him in pursuance of the agreement. So also where in the suit for contribution

so reimbursed by the landlords is not maintainable in the suit for contribution, as there is no mutuality between the landlords on one hand and the co-sharer tenants on the other and they do not come within the provisions of S. 69, Contract Act. Nor can the plaintiff claim any contribution from the transferee, when he was not impleaded as defendant to the rent suit and his jama was separately recognized by the landlord. Having once discharged his liability with respect to the portion which appertains to him he cannot be said to be a person within the meaning of S. 69, what the plaintiff was required to
JOY KRISHNA v. KALI KRISHNA.

—S 70—Suit for money—No alternative prayer—Relief under section—Court, if can grant.

Where a plaintiff sues for recovery of money on the basis of an alleged agreement which is found against and there is no relief asked for under S. 70 of the Contract Act, it is not open to the Court to grant that relief.
(Bhude, J.) TEJ RAJ v. RAM LAL.

I.L.E. (1938) Lah 511=175 I.C. 314=
10 B.L. 703=39 P.L.E. 1007=

—S. 72—Construction—
See C. P. CODE, O. 21, R.
S. 72.

—S. 72—Suit against
decree—Estate attached in
sale—Owner paying decretal
Right to recover.

A suit was brought against promissory note and a pers against her. In execution a holder attached the estate whereson the owner of the

amount paid, had suitable proceedings been taken, was held to make no difference. (Stone, C.J. and Niyogi,

paid by vendor—Breach by vendee—Forfeiture of deposit—Right of vendor to refund—Vendee not taking legal proceedings against vendor—If can be presumed to have treated contract as at an end.

It is a well known principle of law that if a purchaser on agreeing to purchase a property agrees to pay and does pay, an advance or a deposit, that must be regarded as security for the fulfilment of the contract of sale,

CONTRACT ACT (1872), S. 73.

more especially when the deposit is insisted upon by the vendor as a term of the contract. Though there is nothing specific said about forfeiture, the mere fact that a deposit is demanded carries with it the implication that it should be forfeited if the contract is broken, unless the vendee proves an agreement to the contrary. Where a sale deed recites that the consideration for the sale

taking delivery of the sale-deed from the vendor returns it to the vendor being unable to find the purchase money and allows the period of four months' time for registration to pass without making any further payment, he is not entitled to claim back the deposit paid by him and plead that the vendor has treated the contract as at an end. The vendee who holds a deposit which he can forfeit is not bound to institute a suit for damages or other remedy against a vendee who has no money to pay the vendor. It cannot be inferred from the omission of the

—S 73—Applicability—Marriage—Contract between Hindu parents to give daughter of one in marriage to son of other—Effect of—Breach by father of bridegroom—Damages—Measure of—Suit by father of bride—Claim to amount as increased expenditure in fresh marriage alleged to be due to bride having been discarded—Sustainability.

Where a contract is entered into between two Hindus that the daughter of the one should be given in marriage to the son of the other, the agreement is between or

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S. 73
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—S 73—Breach of contract—Interest on damages—If can be allowed.

is that, in the absence of special direction cannot be allowed on damages for sale of goods. (Tik Chond, J.)
LAL v. KARKHANA JOINT HINDU
40 P.L.R. 531.

—S. 73—Interest as damages—Detention of debt.
S. 73 is merely declaratory of the common law as to damages. Interest cannot be allowed as common law by way of damages for wrongful detention of debt. (Sir Shadi Lal) BENGAL NAGPUR RAILWAY CO., LTD. v. KUTTANJI RAMJI 65 I.A. 66=
I.L.R. (1938) 2 Cal 72=1938 A.L.J. 169=
19 Pat.L.T. 125=47 L.W. 231=1938 O.W.N. 261=

CONTRACT ACT (1872), S. 73.

32 S L R 374 = 1938 A. W. R. (P.O.) 62 =
1938 O. L. R. 119 = 1938 A. L. R. 167 =
1839 D. A. 300 = 40 Bom L R 746 =

424

use with carbon paper plant—Breach of contract by seller—Buyer's right to loss of profits.

The plaintiff bought from the defendant a boiler for use in connection with the carbon paper plant at his factory. The boiler was delivered on 20th October, 1933,

plaintiff that he had been unable to meet any profits from producing carbon paper, and he claimed damages for that loss of profit.

Held, (i) that the plaintiff kept the boiler too long to be in a position to be able in law to reject it; (ii) that in the absence of evidence that the plaintiff at any time made or was able to make but for lack of a suitable boiler carbon-paper at a profit, his claim for damages on the basis of loss of profit must fail; (iii) that the plaintiff could recover damages for breach of contract on the basis of the boiler being unfit

sum of money estimated to be the overhead charges in respect of the carbon-paper plant only, during the time

—S 73 Illus (n)—Creditor's right to recover interest.

The Illus (n) to S 73 does not confer upon a creditor a right to recover interest upon a debt which is due to him but confers it upon such interest under any) BENGAL

1938 A L J 169 =

1938 A V

1938 A L R

67 C L J 153 =

A I R 1938 P C

—S 74—Construction of—Right to compensation for breach of contract—Proof of actual damage or loss—If condition precedent

The right of a party complaining of a breach of contract to reasonable compensation under S 74 of the Contract Act is not dependent on proof of actual loss or damage. Even when no actual damage or loss is proved to have been caused by the breach the party is entitled to compensation. (Ganga Nath, J.) MUNNA LAL BIS

CONTRACT ACT (1872), S. 71.

WANATH v. RAHMATULLAH.

1937 A L J 385 =

1938 A W. R. (H.C.) 11.

—S. 74—Contract of lease—Lessee paying certain amount in advance—Contract providing that in case of breach the lessor would

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antee for carrying out the terms of the contract and agreed to pay the balance on an appointed date. The contract contained a clause that if the balance was not paid by the appointed date, the money already paid would be forfeited. On breach of contract, the lessee

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It is settled law that a stipulation for an enhanced rate of interest, if interest is not paid, is not *per se* a penal stipulation. In such a case the most important circumstance on which the decision would depend, is the difference between the enhanced rate and the original rate. The principle of S. 74 of the Contract Act is that Courts will interfere to vary the contract between parties only when equity demands that substantial variation should be made. (Weston) BENI PRASAD v. SARFRAZ ALI SAYED.

1937 A M L J. 97

penalty imposed in the original document between the parties. In default of the payment of instalments the defendant would be liable to pay the whole sum of Rs 5,600.

Held, that there was clearly a penal clause.

Held, further, that the executing Court as a Court of equity had the power to relieve against the penalty even if the decree was one on award (Hastings and Lobo, JJ) AHMEDBUX v. DALCHAND

177 I C 925-11 B 69 = A I R. 1938 Sind 185.

—S 74—Penalty—Stipulation for interest at 12 per cent—Clause that on certain default interest to be

mensem, does not stand in the way of the Court giving relief since the contract contains a penal clause. What the Court has to consider is the contract, and not the claim made. When the security at the time of the loan was worth more than twice the amount advanced, the Court can take that into consideration and reduce the interest. In such a case the most that can properly be allowed is 1 per cent, simple interest per mensem, originally reserved in the mortgage deed (Stone, C. J. and Dwyer, J.)

CONTRACT ACT (1872), S. 68.

BHAGWANTRAO v. DAMODAR,

20 N.L.J. 285 =

—Ss 78, 108 and 121—

company—If goods—Transfer
transferor to rescind.

Share certificates are goods within the meaning of S. 78 of the Contract Act when the person in whose name the shares stand sells or transfers them to another, the title to the same passes to the transferee who gets a valid title to them, and the transferor is not bound from rescinding his contract of sale or

Ghani and Singaravelu Mudaliar,
MIAH v. RANGAPPA.

43 Mys. II CR 58.

—S 124—Contract of "indemnity"—Undertaking
by second mortgagee to pay off prior mortgage—Breach
—Suit by mortgagor for damages—Breach—Limita-
tion—Starting point—Limitation Act, Arts. 83 and 116.

An undertaking by a second mortgagee to pay off a prior mortgage cannot be held to be a contract of indemnity in the absence of an express
deed of mortgage to the second mortg
nify the mortgagor; a suit for damage
breach of the undertaking to pay off th

CONTRACT ACT (1872), S. 133.

—S. 128—Special contract—Letter of guarantee—
Undertaking to pay amount "after attempts have been
made to realise the same from the principal debtor"—
Effect—Liability of guarantor—When arises—Here
demand for payment from principal—If sufficient to

undertakes
become due
or attempts

have been made by the creditor to realise the same from the principal debtor," there is a special contract between the creditor and the guarantor to the effect that the creditor should not be entitled to recover from the guarantor until he has first attempted and failed to obtain satisfaction by some sort of proceedings against the principal debtor. The creditor's right to recover

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id 139—Applicability—Surety
it—Decree—Execution against
—Appeal from decree—Appli-
cation—Offer and acceptance of
—Effect—Former surety—If

DEMANDS NEGOTIABLE ACT, S. 3.

I.L.R. (1937) 2 Cal 698

—S. 126—Guarantee—Construction—Liability of
guarantor

In construing a guarantee, the principle is that a guarantee will only extend to a liability precisely answering the description contained in the guarantee. There-
fore before a creditor can enforce a
a guarantor he must satisfy that

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discharged.

Having regard to the definitions in S. 126 of the Contract Act, Ss. 133, 135 and 139 of the Act cannot in terms apply to a surety who executes a surety bond to a Court; there is in such a case no creditor within the meaning of S. 126. But there is no reason why the principles underlying those sections should not be

question whether
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on of immovable
property and mesne profits, the plaintiff applied for

doctrine though applicable to a corporation, cannot apply to a Court or an authority exercising judicial functions; a certificate officer is a Court under the Act. The consideration is also "lawful" in that the release is in fact, in aid, and not to the detriment, of the

amount of mesne profits for which A. and B. S. the former two sureties were liable, and D. executed a bond to the appellate Court undertaking to be liable for the amount in case the defendant failed to abide by the final decree or decree that might be passed in the matter. On

CONTRACT ACT (1872), S. 133

23—11—1934 the decree of the trial Court was confirmed. The plaintiff having sought to execute the decree against the former sureties, *M. and B. S.*, they pleaded that they were discharged owing to *D.* having been accepted as a new surety in their place.

Held (1) that the Contract Act was not exhaustive, (2) that the general principles of the law of suretyship (and in particular the principle that the rights of a surety are not to be interfered with without his consent) must be applied and ought to be applied even though the provisions of the Contract Act did not govern the case, (3) that the Court itself having been responsible for a change in the situation which materially affected the position of the former sureties, and there having been a delay of six years without any justification it must be held that they were discharged from liability (*Broomfield and Macklin, J.J.*) **PARVATIBAI HARIVALLABH:**

variation—*J.* discharged.

the contract of guarantee that the promisee must show performance before he can hold the promisor liable. If the contract with the principal debtor is varied without

draws the cancellation and submits to the claim of the creditor. If the consideration for the original contract with the principal debtor fails, the latter is relieved of all liability, and necessarily the surety also ceases to be liable as surety. The fact that the principal debtor withdraws his defence to an action by the creditor and allows judgment to be given against him cannot affect the position of the surety. (*Loach, C.J. and Venkata ramana Rao, J.*) **NUSERWANJI CURSIDIJI BHESANIA & CO v. MAHAMUJI ANMAL** 1938 MWN 325—**A I R 1938 Mad 585**

—**S. 133—Surety for tax collector of municipal committee—Son of tax-collector allowed to collect taxes without notice to surety—Defalcation by son—Liability of surety**

A person stood surety for the tax-collector of a Municipal Committee. The security bond provided that the surety was to be liable in case the tax-collector misappropriated any amount that came to his hands or in case any default in payment was made by him. Subsequently the son of the tax-collector began to collect the taxes in his father's name with the consent and knowledge of the President and Secretary of the Municipal Committee. The President or the Secretary did not give any notice of this fact to the surety. On a defalcation being made by the son the surety was sought to be made liable.

Held, that as the person had stood surety only for the personal honesty of the tax-collector and not of his son and as the kind of employment was such that it should have been conducted personally, the surety had given security bound to something for which (*Mostly, J.*) **H PIN SEIN t** **PALITY.** 177

CONTRACT ACT (1872), S. 136.

—**Ss. 134 and 139—Discharge of surety—Creditor excluding debt guaranteed by surety from settlement by the Debt Conciliation Board.**

The position of the surety is twofold: on the one hand he is liable to pay the debt, on the other hand when he pays the debt, he stands in the shoes of the creditor and he is entitled to enforce against the principal debtor all the remedies which were available to the creditor. If the liability of the surety is so co extensive with that of the principal debtor, his right is not less co extensive with that of the creditor after he satisfied his debt. To enable the surety to enforce his right against the principal debtor, there are two essential conditions (i) that the debt itself must subsist, (ii) that his remedy against the principal must remain unimpaired. Consequently the creditor will be entitled to compel the surety to perform his

declaring that he would recover it from the surety, the

and the creditor by lifting the burden of the debt from off the shoulders of the debtor and laying it on those of the surety seeks virtually to shift his own disability

—**S. 136—Auction purchaser allowed to withdraw deposit on furnishing security to re deposit when asked—Surety bond executed—Purchaser when asked to deposit amount asking for time which was granted—Consent of counsel for decree-holder—Surety, if absolved from liability.**

Where in an execution case, the auction purchaser who had deposited the sale price in Court was allowed to withdraw it on furnishing security to re deposit when asked to do so, and on so being asked he asked for a month's time to deposit the amount which was granted by the Court and was not objected to by the counsel for the decree holder, but on subsequent date the Court being aware of the surety bond ordered the surety to deposit the amount and modified the previous orders.

Held, that the surety was not absolved under S. 135, Contract Act. The bond was in favour of the Court and the Court had discretion to order the auction-purchaser to deposit the amount at any date it liked and the consent of the counsel for the decree-holder was immaterial (*Bhide, J.*) **MOHAMMAD RAMZAN v. MT. KHADIJA SULTAN BEGUM.** 40 F L R 755—**A I R. 1938 Lab 472.**

—**S. 139—Surety bond—Surety undertaking obligation on behalf of two defendants—Liability in respect of the amount decreed against the defendants—Suit dismissed against one defendant—Compromise decree passed against another defendant—Discharge of surety.**

In a prior suit, a surety gave a security bond, on the bond ran thus: "I, the undersigned, agree to pay to the plaintiff any amount decreed against the defendants from the said

CONTRACT ACT (1872), S. 68.

transferor to rescind.

Share certificates are goods within the meaning of S. 78 of the Contract Act when the person in whose name the shares stand sell or transfers them to another, the title to the same passes to the transferee who gets a valid title to them; and the transferor is precluded from rescinding his contract of sale or transfer. (*Abdul Ghani and Singaravelu Mudaliar, JJ*) **AKKITHIM**
16 Mys L J. 115 =
43 Mys. H O R 68.

—S. 124—Contract of "indemnity"—Undertaking by second mortgagee to pay off prior mortgage—Breach—Suit by mortgagee for damages—Breach—Limitation—Starting point—Limitation Act, Arts. 83 and 116.

An undertaking by a second mortgagee to pay off a prior mortgage cannot be held to be a contract of indemnity in the absence of an express deed of mortgage to the second mortgagee; a suit for damage breach of the undertaking to pay off the prior mortgage is governed by Art. 116 of the Limitation Act, when the contract is registered. Limitation commences to run from the time the contract is broken and not from the time at which any damage arising therefrom is sustained by the plaintiff.
SAO v. GUNI SING
4 B R 6
1938 F

—S. 126—Contract of guarantee—What amounts to—Who can enforce it—See BENGAL PUBLIC DEMANDS RECOVERY ACT, S. 57.

I L R. (1937) 2 Cal 698

—S. 126—Guarantee—Construction—Liability of guarantor.

In construing a guarantee, the principle is that a guarantee will only extend to a liability precisely answering the description contained in the guarantee. Therefore before a creditor can enforce the liability given by a guarantor, he must satisfy that the conditions of the guarantee have been fulfilled and that he is entitled to recover.

—Ss. 127 and 23—Consideration for guarantee—Sufficiency—Lawful—Release of certificate-debtor under Public Demands Recovery Act (Bengal Act III of 1923).

CONTRACT ACT (1872), S. 133.

—S. 128—Special contract—Letter of guarantee—Undertaking to pay amount "after attempts have been made to realise the same from the principal debtor"—Effect—Liability of guarantor—When arises—Mere demand for payment from principal—If sufficient to entitle creditor to proceed against guarantor.

Where a surety by his letter of guarantee undertakes to pay the creditor the amount which may become due to him under the letter of guarantee "after attempts have been made by the creditor to realise the same from the principal debtor," there is a special contract between the creditor and the guarantor to the effect that the creditor should not be entitled to recover from the guarantor until he has first attempted and failed to obtain satisfaction by some sort of proceedings against the principal debtor. The creditor's right to recover

demand payment from the principal debtor, so that would not amount to an attempt to realise the debt from the assets of the principal debtor (*Collector and Barbas. II*) **RADHA KRISHNA DAS v. AJODHIYA**
= 1937 A W R. 1194.

Applicability—Surety—Execution against from decree—Application for stay of execution—Offer and acceptance of fresh surety in appeal—Effect—Former surety—If discharged.

Having regard to the definitions in S. 126 of the Contract Act, Ss. 133, 135 and 139 of the Act cannot in terms apply to a surety who executes a surety bond to a Court, there is in such a case no creditor within the meaning of S. 126. But there is no reason why the principles underlying those sections should not be applied *mutatis mutandis*, though the question whether a surety is discharged from the undertaking he has entered into to the Court depends on the construction of the surety bond. In a suit for possession of immovable property and mesne profits, the plaintiff applied for appointment of a receiver pending the suit, but the defendant agreed to give security for the profits. One *M* offered and accepted a surety for the mesne profits of the year 1927—1928 and on 23-10-1937 he executed a bond to the Court undertaking that in the event of the defendant failing to satisfy the decree or order that he had obtained from the Court, the surety would pay the amount of the decree or order.

apply to a Court or an authority exercising judicial functions; a certificate officer is a Court under the Act. The consideration is also 'lawful' in that the release is in fact in aid, and not to the detriment, of the

former two sureties were liable, and *D.* executed a bond to the appellate Court undertaking to be liable for the amount in case the defendant failed to abide by the final decree or decree that might be passed in the matter. On

CONTRACT ACT (1872), S. 133

23—11—1934 the decree of the trial Court was confirmed.

Held (1) that the Contract Act was not exhaustive,
(2) that the general principles of the law of suretyship

change in the situation which materially affected the position of the former sureties and there having been a delay of six years without any justification it must be held that they were discharged from liability (*Broomfield and Macklin, JJ*) PARVATIBAI HARIVALLABH

the consent of the surety, the latter who is not a consenting party to the variation is discharged from liability, although the principal debtor who is entitled to cancel and does cancel the contract, subsequently withdraws the cancellation and submits to the claim of the creditor. If the consideration for the original contract with the principal debtor fails, the latter is relieved of all liability, and necessarily the surety also ceases to be liable as surety. The fact that the principal debtor withdraws his defence to an action by the creditor and allows judgment to be given against him cannot affect the position of the surety. (*Leach, C.J. and Venkata Ramana Rao, J.*) NUSERWANJI CURSINJI BHFSANIA & CO v MAHANUJI AMMAL. 1938 M W N 325—A I R 1938 Mad 585

—S 133—Surety for tax-collector committee—Son of tax-collector allowed without notice to surety—Defalcation by of surety.

case any default in payment was made by him. Subsequently the son of the tax-collector began to collect the taxes in his father's name with the consent and knowledge of the President and Secretary of the Municipal Committee. The President or the Secretary did not give any notice of this fact to the surety. On a defalcation being made by the son the surety was sought to be made liable.

Held, that as the person had stood surety only for the personal honesty of the tax-collector and not of his son and as the kind of employment was such that it should have been conducted personally by the tax-collector, the surety had given security, it bound to something for which (*Mostly, J*) H PIN SEIN v PALITY. 177

CONTRACT ACT (1872), S. 136.

—Ss. 134 and 139—Discharge of surety—Creditor

when he pays the debt, he stands in the shoes of the creditor and he is entitled to enforce against the principal debtor, his right is that of the creditor enable the surety to enforce his right against the principal debtor, there are two essential conditions (i) that the debt itself must subsist, (ii) that his remedy against the principal must remain unimpaired. Consequently the creditor will be entitled to compel the surety to perform his

entailed by the Debt Conciliation Act, on the surety in an aggravated form and hence the surety is discharged. (*Atiyer, J*) BABU RAO v. BABU MANIKLAL. 176 IC 688—17 EN 70—A I R 1938 Nag 413.

—S 135—Auction purchaser allowed to withdraw deposit on furnishing security to re deposit when asked—Surety bond executed—Purchaser when asked to deposit amount asking for time which was granted—Consent of counsel for decree-holder—Surety, if absolved from liability.

Where in an execution case, the auction purchaser who had deposited the sale price in Court was allowed to withdraw it on furnishing security to re deposit when asked to do so, and on so being asked he asked for a month's time to deposit the amount which was granted

the counsel for the Court be the surety to follow orders.

under S. 135, Contract Act. The bond was in favour of the Court and the Court had discretion to order the auction purchaser to deposit the amount at any date it liked and the consent of the counsel for the decree-holder was immaterial (*Hide, J*) MOHAMMAD RAMIZAN v MT. KHADIJA SULTAN BEGUM. 40 P L R 755—A I R 1938 Lah. 472.

—S 139—Surety bond—Surety undertaking obligation on behalf of two defendants—Liability in respect of the amount decreed against the defendants—Suit dismissed against one defendant—Compromise decree passed against another defendant—Discharge of surety.

In a prior suit, a surety gave a security bond, on the bond ran thus: "I, the undersigned, pay to the plaintiff any amount against the defendant from the same

CONTRACT ACT (1872), S. 123.

defendants. The plaintiff in that suit entered into a compromise with one of the defendants as a result of which that defendant suffered a decree to be passed against him for the amount claimed in the plaint. The other defendant contested the claim and eventually the suit was dismissed against that defendant and no decree was passed in respect of the suit claim. The plaintiff's heir, being unable to recover the amount by executing the compromise decree, brought a suit to enforce the liability under the security bond.

Held, that before an obligation can accrue in favour of creditor, there must be a decree against both the defendants and there must be a failure to recover the money from both the defendants or their property. A compromise decree against one of the defendants cannot be held to be a decree against the 'defendants' within the meaning of the bond and the plaintiff cannot be heard to say that she has failed to recover the amount

the suit, not merely barring of remedy of creditor. Hence the surety is discharged from his obligation. (*Pandurang Rao and Venkataramiah Rao, Jf.*)
VENKANNAR v. SANVASAYYA. 1938 M W N. 68
47 L W 81—A.I.R. 1933 Mad. 422.

—S. 178—Applicability—'Good faith'—Meaning of.

The words 'good faith' in S. 178, Contract Act, before its amendment bear the same meaning as is given in sub-S. 20 of S. 3 of General Clauses Act, though in terms that sub section may not apply to any Act earlier in date than the General Clauses Act. The general rule

bank a receipt granted by the motor dealer to his salesman for the price of the car and that the enquiries made by the bank also showed that he (the salesman) was the owner of the car. There was nothing to put the bank on its guard. It was argued that the fact that the car bore a trade number should have put the pledgee on its guard and the bank by not insisting on the production of the 'C' certificate which would have shown the name of the owner was guilty of negligence and had therefore not acted in good faith.

Held, that there was nothing suspicious in the conduct

was not guilty of negligence in not insisting on the production of it and that the bank had acted in good faith and was therefore entitled to protection under S. 178. (*Pandurang Rao and King, Jf.*)
MADRAS AUTOMOBILES v. MODERN BANK, LTD., CHENNAI.
A.I.R. 1933 Mad. 645.

—S. 178—Object—Pledgee taking goods from person of whom he knew nothing—Pledge turning out to be offence and pledgee agent—Pledgee, if can return property.

S. 178 has been enacted in order to protect those persons who in good faith deal with persons whom they know to be mercantile agents, but of the details of whose agency they are not and cannot be expected to be aware.

CONTRACT ACT (1872), S. 182.

It is relied upon only in cases where the pledgee is aware that the pledgor is a mercantile agent. The agent referred to is an agent such as the pledgee might well suppose had power to pledge, but if the pledgee did not know him to be an agent at all he cannot have any reason to suppose that he had power to pledge. If he takes goods from a person of whom he knows nothing whatsoever and if it turns out that the person's pledging of the goods with him was a criminal offence and that the pledgor was a mercantile agent, then he can have no claim to retain the property. (*Mackney, J.*)
AH CHEUNG v. AH WAIN. 176 L.C. 703—11 E.R. 76—39 Cr.L.J. 781—A.I.R. 1938 Rang. 249.

—S. 178 (before amendment)—"Person who is in possession"—If includes owner.

The words "a person who is in possession" as used in S. 178 of the Contract Act before its amendment includes an owner as well as a mercantile agent and are not

Pledgee handing over receipts to pledgor—If loses rights in property pledged.

A railway receipt is a document of title and a pledge of the railway receipt operates as a pledge of the goods, though by the general law a pledge of documents is not *prima facie* deemed to be a pledge of the goods. The pledgee does not lose his right of property as pledgee by parting with the custody of the railway receipts or by entrusting them to the pledgor or his agents or mandataries for the special purpose of convenient dealing with the goods by collecting them from the Port Trust and putting them into the pledgee's godown. Such a proceeding is the usual course of business and is either necessary

—S. 178—Validity of pledge—Burden of proof.

Under S. 178 of the Contract Act, a pledgee may get

GEE v. NIPPON YUSEN KAISHA. 67 II L.J. 276.

—S. 182—Agent—Person employed to sell unredeemed articles from pawn shop.

The definition of an agent in S. 182, is wide enough and covers a person employed to sell unredeemed articles from a pawn shop on behalf of the employer. Such a person although a servant or a shop assistant, is an agent of the employer in the matter of selling such goods. (*Mackney, J.*)
AH CHEUNG v. AH WAIN.
176 L.C. 703—11 E.R. 76—39 Cr.L.J. 781—A.I.R. 1938 Rang. 249.

—S. 182—Commission agent—Position of.

Commission agents are agents within S. 182 but are not agents *pari et simple*. They are agents up to a

CONTRACT ACT (1872), S. 182.

point and to that extent they stand in a position of active confidence towards their principals, but beyond that they are not agents in the real sense of the term and the relationship between the parties from then on is one of debtor and creditor. (*Vishan Bose, J.*)

KALYANJI v. TIRKARAM. 176 I.C. 675 = 11 E.N. 65 = A.I.R. 1938 Nag 251

—S. 182—Commission agent receiving goods as such and then selling them—Position of.

Where a person receives goods from another as a commission agent and then sells them for his own account, he is not a commission agent up to a certain point of sale. Thereafter whether

while principal and not mer-
this is so or not must depend
case (*Vishan Bose, J.*) KA

176 I.C. 675 = 11 E.N. 65

—S. 182—Definition—Scope of

Definition of agent given
embraces a servant pure and
therefore cannot be placed
(*Vishan Bose, J.*) KALYANJI

176 I.C. 675 = 11 E.N. 65 = A.I.R. 1938 Nag. 251.

—Ss 187 and

agent—Principal's li-
against principal—E
unjust enrichment—I.

Where the agent's authority is defined in writing, it is
doubtful if S. 187 of the Contract Act can be relied upon

Instrument the authority in question is to be found within
the four corners of the instrument, either in express
terms or by necessary implication. The limits of neces-

value of the property. The absence of other funds in
the hands of the agent at the time
not a necessary condition of the credit
against the principal. This equitable
ed by the Contract Act (*Varadach-
rang Rao*)

—S.

aim to file a suit for possession of estate and to conduct
it—Provision for division of estate between them and
stranger after recovery in suit in case of success—Death
of one reversioner—Effect—Suit by stranger on behalf.

CONTRACT ACT (1872), S. 230.

of all—Maintainability—Agency—If coupled with
interest—Right transferred—If mere right to sue.

On the death of a Hindu widow who held her hus-
band's estate, the estate, vested in R and B,
sons of two brothers. After R's death, his sons (plain-
tiffs 1 to 5), along with B, executed on 21.11.1916, a
document in favour of the 6th plaintiff who was a
stranger. The said document provided for the 6th
plaintiff filing a suit for possession of the estate on be-
half of all the plaintiffs and B, and conducting it, and
for the properties when recovered by the suit being

security or a part of the security and not to cases where

wards and incident-
cy having become
the plaint filed by
document. (5) that
there was no present transfer of a moiety of the rever-
sioner's interest in favour of the 6th plaintiff, but only
an agreement of a moiety to be transferred to the 6th

assignors and the assignee, and the defendants who had
no concern with that could not plead that the agreement
was champertous so as to bar the maintainability of the
suit (*Venkatasubba Rao, J.*) VENKANNA v. ATCHUTA-
RAMANNA. 1938 M.W.N. 259 = 47 L.W. 492 =
A.I.R. 1938 Mad 542 = (1938) 1 M.L.J. 610

ext-
ity to
art to-
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h.
715.

eg interest in contract—

contract as such, if he
own
rinci-
(76
679.

—S. 230—Applicability—Pucca Arhita

Ordinarily the words "Pacca Arhita" convey that the
so-called agent is acting as a principal on behalf of the
person with whom he buys or sells the commodities

CONTRACT ACT (1872), S. 230.

question. There can therefore be no question of the application of S. 230 of the Contr
(*Dalip Singh and S Kemp, J.S.*)
LTD, v. BHARAT KRISHNA TRADII

177 I.C. 985—A I

—Ss 230 and 60—Money

debtor to decree-holder's pleader in part payment of
decree—Pleader, if can be sued alone—Pleader's right

decree-
to the
decrees

and had the execution stayed for a certain period, but on failure of the judgment-debtor to pay the decretal dues in full within that period writs of attachment were executed against him resulting in payment of five of the decrees in full, and the pleader thereafter certified in Court the money paid to him as having satisfied the sixth decree in which the judgment debtor was only one of two judgment debtors, in a suit by the judgment-debtor against the pleader for the recovery of the amount paid to him

appropriating it to the unsatisfied decree (*M. C. Ghose, J.*)
BIDHU BHUSAN SEN v. MOFIZUDDIN AHMED

42 C.W.N. 1263

—S. 235—Basis of action under—Measure of damages.

The basis of an action under S. 235 of Act is the implied warranty by the prt that he had the authority to act. The damages must accordingly in substance be the other party would have had from the representation that he was the authorise been true (*M. C. Ghose and R. C.*)

KISHORI PRASAD v. SECRETARY OF STATE.

42 C.W.N. 118—I.L.R. (1938) 1 Cal. 463—

176 I.C. 990—11 E.C. 194—66 C.L.J. 592—

A.I.R. 1938 Cal. 151.

—S. 238—Partner—Firm—If can be partner—
Death of member of constituent firm—If dissolves
main firm.

CO-OPERATIVE SOCIETIES ACT (1912), S. 2.

he is entitled to recover from the other defendant, a

—Co-defendant—False defence jointly put forward
—Costs awarded to plaintiff—Claim for contribution.

Where different sets of defendants had jointly put forward a false defence in a previous case and had been ordered to pay the costs of the opposite party, any of them is entitled to maintain a suit for contribution against the others. In the absence of any direction to the contrary in the decree, the costs should be apportioned among the sets equally. (*Tek Chand, J.*) SARAN DAYAL v. DAL CHAND. 177 I.C. 847—

40 P.L.R. 469—A.I.R. 1938 Lah 579

—Liability for—Mahomedan co-heirs—Realisation of dower decree from non taluqdari property—Taluqdari property, if liable to contribute.

Where a Shia Mahomedan died leaving both taluqdari and non-taluqdari property and one of the widows

from out
another
taluqdar
property
as to the

extent to which execution was levied against the non-taluqdari property in respect of the dower debt, it was held that the plaintiffs had a right to contribution in respect that the taluqdari property was liable for the

4 B.E. 608—67 M.L.J. 350—13 Luck 494—

1938 O.A. 508—1938 P.W.N. 514—

1938 O.L.N. 282—1938 O.W.N. 581—

1938 A.L.R. 415—40 Bom.L.R. 843—

1938 A.L.J. 843—A.I.R. 1938 P. 169—

(1938) M.L.J. 210 (P.O.).

—Right to—Ex partners or persons tracing relation-
ship to dissolved partnership—Right of contribution in

ACT,

M.L.J. 267.

OF 1912)

rd against

40 Bom.L.R. 995

CONTRIBUTION—Co-defendants—Decree for costs—

Payment by one—Right to recover if in proportion to interest affected by decree.

Certain properties were mortgaged to who had advanced unequal amounts. obtained thereon and the properties were br Thereafter a third person obtained a de half the mortgaged properties were his and was not liable to attachment and sale. The original mortgagees who were defendants in the above suit were directed to pay the costs of the plaintiff therein. Where such costs are realised from one of the defendants alone,

—S. 2 (c)—Member—Hindu joint family—If can be member.

A joint Hindu family can be a member of a Co-operative Society. (*Hormill, J.*) VILLUPURAM

society and taking loans—Liability of joint family.

The fact that the bye laws of a co-operative society established under the Co-operative Societies Act of 1912 do not expressly state that the membership of the

CO-OPERATIVE SOCIETIES ACT (1912), S. 43.

extraordinary general meeting of the shareholders, and

powers given by sub-S (1) and the items mentioned therein do not exhaust the list of matters on which rules might be framed by the Local Government. Accordingly R. 28 (3) of the Rules framed by the Local Government which relates to distribution of profits in case of societies with limited liability and which is framed with a view to carry out the purpose of the Act as laid down in S. 33 is not *ultra vires*, although there is no specific item mentioned in S. 43 (2) relating to distribution of profits in case of Societies with limited liability. (*Mukherjee, J*) HARA DAYAL NAG v. CHANDPUR CENTRAL CO OPERATIVE BANK, LTD.

I L B. (1938) ■ Cal 144-42 ■ W.N 461-
A I B. 1938 Cal 394.

—S 43—Rule-making power of Local Government
—Extent of—R. 22, Sub Rr. (2), (5) and (6)—*If ultra vires*

ses of sub-S. (2) of S 43 of the Act are only illustrative and do not confer rule-making power to implement the Act conferred upon the Local Government by S. 43 of the Act.

I.L.R. (1938) 2 Cal 144-42 CWN 461=
AIR 1938 Cal 394

DACCA CO-OPERATIVE INDUSTRIAL UNION, LTD v.
DACCA CO-OPERATIVE SANKHA SILPA SAMITIES,
LTD I.L.B. (1938) 2 Cal 103-178 I ■ 363-

—B 42—Award against a society—Liquidator appointed for such society—Execution against—If available.

Where the award is against a liquidator of that society cannot so far as the executability of the members are concerned. He is

68 CLJ 353-42 CWN 391=
A IR 1938 Cal 327

—8 43 (1)—Rules framed under—Award against

—B. 43—Bengal Government Resolution No. 207 of 1912
for dividend on declaration that—
extraordinary general meeting res.
ultra vires—Jurisdiction of Civil Co.

Where the plaintiff sues a Co-Op for recovery of a certain sum alleged to be due to him as dividend on certain preference shares held by him, on a declaration that the constitution of the Board of management was illegal, that it had no authority to call an

604
 82

—S. 43 (2) (1)—'Dispute'—*Meaning of.*
There would be a dispute so long as a claim is asserted by one party and denied by the other be the claim a

CO-SHARER.

CHANDRAMANI DEBI v. CHANDANMULL.

I.L.R. (1938) 1 Cal. 206 = 176 I.O. 114 =
11 B.C. 42 = A.I.R. 1938 Cal. 243

COSTS.

partition, there are two alternatives open. Either the partition can proceed of the area in that particular Mahal apart from the 'Manjuria' area or else the appli-

rights—Partition of estate—Right of mortgage or co-sharer getting land on partition to erect ganyat.

The leasing out of "bakashi" land to raiyats on an adequate rent is an act of ordinary management of property such as a mortgagee in possession is entitled to do. When the raiyats so admitted cultivate the land and deliver rent to the mortgagee, the mortgagee is not

therefore only some of the co-sharers who have executed a mortgage enter into a compromise with the mortgagee, whereby they agree to deliver some land in mortgage in consideration of his reducing the mortgage charge and releasing rest of the property from the mortgage, the co-sharers entering into the compromise are bound by it to their share and the compromise is not voidly because one of the mortgagors is not a party. (Blade, J.) KISHAN SINGH v. PRITAM A.I.R. 1938 Lah. 737.

COSTS—Co-defendants—Decree for costs against—Payment by one—Right to contribution. See CONTRIBUTION—CO-DEFENDANTS.

1938 A.W.R. (H.C.) 637.
Discretion—Dismissal of suit—Right of defendant—Defendant not proving case set up by him—If

RAM RAI v. NIRANJAN RAI.

175 I.C. 943 = 11 B.P. 35 = 1938 P.W.N. 371 =

19 Pat L.T. 387 = 4 B.R. 658 = A.I.R.

—Mutual relation—Person opens wall of his house abutting on common for injunction—If lies.

Where a person opens a door-way in his own house abutting on a courtyard with property of the parties and each one has a door to his house opening in the courtyard, the opening does not amount to an ouster of the other co-owners from the courtyard and the other co-owners cannot bring a suit for injunction to restrain him from opening the door unless an excessive user or a user inconsistent with that to which it has been put before, has been proved. (Tet Chand, J.) KHOTA RAI v. TIMKU RAI.

178 I.C. 289 = 40 P.L.R. 746 = A.I.R. 1938 Lah. 487.

—Mutual relation—Trustee for payment of rent committing default—Purchase by trustee—Effect of.

If either a co-sharer or a person trustee for the payment of rent default of rent with the express object of the interest of the other co-sharer, that taken to enure for the benefit of the person (D. N. Mitter and Paterson, JJ.) MALEKH v. SHASHI MOULI NAG.

—Partition—Alienation of share by one co-sharer—Alienee getting possession—Suit by other co-sharers for partition—Equities in favour of alienee—Right to retain purchased—Prospective rights of from latter as against general Partition See MAHO SHARERS.

—Partition—Portion of Mahal other Mahals—Procedure—Alter-

Where a portion of a Mahal other Mahals, if a co-sharer of the

—Solicitor's charges—Claim to more than scale

have done a substantial amount of work which will

COTTON SPINNING AND PRESSING FACTORIES ACT (1925), S. 8.
KISHORE. 175 I.C. 112=10 B.B. 523=

Other creditors impleaded as defendants
 primary decree—Court granting not whole
 but only dividends at certain percentage of
 payable by them. See **COURT-FEES ACT, s. 11.**

43 O.W.N. 52=A.I.R. 1938 Cal. 785.
 —Ascertaining of—Looking to substance of
 point—Permissibility—Court-Fees Act—Rules of
 construction.

Though the Court Fees Act is a fiscal enactment and
 its provisions have therefore to be strictly construed yet

the language of the relief claimed in the plaint. A
 Court ought not to allow itself to be deceived by the
 language used for evading the payment of proper court-
 fee by concealing the real purposes of the suit. (Srivastava,
 C. J., *Zia ul Hasan and Smith, J.J.*) ROOP
RANI v. BITHAL DAS 13 Luck

10 B.O. 158=
 A.I.R. 2

—Procedure—Duty of Court-
 tional Court fee necessary and
 necessary amendments instead of
 Court-fee and rejecting plaint.
 Property—Power of Court to di
PRACTICE—PROCEDURE.

—Suit for possession—Pro
 cedure

A mere intention to dedicate property for religious
 purposes is not sufficient to convert that property into
 religious property. Court fee to be paid for recovery of
 possession of such property will be *ad valorem*.
 (Mackney, J.) **DAW SEIN v. MA MAI MA.**

178 L.C. 232=A.I.R. 1938 Rang 303

—Value for purposes of Appeal against order
 making decretal amount recoverable from certain
 property

Where a decretal amount has been ordered to be
 recovered from a certain property and an appeal is pre-
 ferred to get that property released from the
 the value for the purposes of court-fee
 price of the property or the decretal amount
 is less (Almond, J. C. and Mr. Ah

COURT-FEES ACT (1870), S. 7.

of the section, even although the High Court purported
 to impose the fee under a power derived from some
 other source. R. 204 of the Insolvency Rules (Calcutta)
 made under S. 112 of the Presidency Towns Insolvency
 Act could have been made by the High Court under the
 powers conferred on it by S. 15 of the Indian High
 Courts Act and the fees prescribed thereby are accordingly

consequential relief—Valuation by plaintiff—Revision
 —Power of Court.

S. 7 (iv) of the Court-Fees Act is subject to the provi-
 sions of S. 8 (c) of the Court-Fees (Bengal Amendment)
 Act, 1935. If, therefore, in a suit to obtain a declara-
 tory decree in which consequential relief is prayed, the

(as amended in Madras), s. 7 (iv-A)—
 Applicability—Ex-munor—Suit to set aside alienation by
 guardian and for possession of alienated property—
 Court fee—Valuation.

(as amended in Madras), s. 7 (iv-A) and
 Sch II, Art 17 A (iii)—Applicability—Suit by Hindu
 widow—Prayer for declaration that defendant not
 adopted by her—Further prayer that deed of adoption
 executed by her in his favour be declared void and
 cancelled—Court fee payable—"Document securing
 money"—Meaning of.

The substance of the claim made by a plaintiff, a
 Hindu widow, in a suit in a subordinate Judge's Court
 was to have it declared that the first defendant was not
 adopted by her to her husband and that a certain deed
 executed by her in his favour be declared void and
 cancelled. On the first
 ing the relief
 a court-fee of

It was found that
 value of the properties both movable and
 affected by the declarations was over

Held, (1) that the court-fee in respect of the first
 relief of declaration as to the status of the first defendant

plaintiff and the court-fee paid by her were therefore
 correct

Held, further, that the documents which required to
 be set aside were documents whereby rights are

construction must be given to it and as a particular
 fee could have been imposed under the High Courts Act
 or the Government of India Act, it is payable in virtue
 of the power conferred by that Act within the meaning

COURT-FEES ACT (1870), S. 7 (iv) (b).

ferred or released such as sales, gifts, mortgages, leases, releases, etc., and to fall under S. 7 (iv A), the document sought to be set aside must of itself have secured the property, *i.e.*, there must be the said property or a release of would operate to extinguish it.

W 623—
A.I.R. 1938 Mad 824

BISHAN RANI 40 P.L.B. 2=A.I.R.

—S. 7 (iv) (b) and (c)—Suit for by defendant that part of property does joint estate—Court-fee payable on plain FEES ACT, SCH II, ART. 17 (vi)

1937 Rang. L.R. 447.

—S. 7 (iv) (c) and (v)—Applicability—"Declaration"—Suit for possession of land—Anticipation of possible defence on ground of disposition of property—Defendant challenging title of plaintiff—Court fee payable.

There is much misunderstanding meaning of the word "declaration" remedy to be granted by a Court up of describing a suit for possessive suit "for a declaration of title together possession of the property in suit," "ration" has been used to mean what is described as the finding of fact necessary before the decree for possession can be granted. In every suit for possession the plaintiff cannot succeed unless he proves the facts necessary to establish his title.

possession S. 7 (iv) (c) has application to declarations properly so called, such for instance as declarations of title. If a plaintiff holds a decree for possession of a piece of land, it has no sense of a decree for possession. It is not in the least necessary for a plaintiff in a suit for possession to obtain a declaration of title in addition to an order for possession. If he happens to obtain a declaration of title, it may and should treat the case as a declaration of title.

COURT-FEES ACT (1870), S. 7 (iv) (c).

and there cannot be any pretence that the claim is one for a declaration with consequential relief falling under S. 7 (iv) (c). Merely because the defendants challenge the title of the plaintiff does not make the suit a suit for a declaration.

—S. 7 (iv) (c) and (v)—Applicability—Partition suit—Plaintiff claiming to be in joint possession of property.

second relief is concerned under Art. 17 (vi) of Sch. II of the Court-Fees Act. A denial by the defendant of the plaintiffs' joint possession at the date of the suit does not alter the character of the suit. If the defendant succeeds in establishing his plea that the plaintiffs were not in joint possession at the date of the suit, the suit becomes a suit for a declaration of title.

—S. 7 (iv) (c)—Applicability—Suit to declare title.

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—S. 7 (iv) (c) and Sch. II, Art. 17 (iii)—Applicability—Suit by a party to a decree to declare it illegal and void—Court fee—Consequential relief, if implied.

Where a party to a decree sues for a declaration that it is illegal and void, the granting of such a declaration in his favour has the effect of setting aside the obligations thereunder. If the plaintiff is entitled to consequential relief, it is implicit in the declaration that he is entitled to it.

COURT-FEES ACT (1870), S. 7 (iv) (c).

—Ss. 7 (iv) (c) and 7 (5).
*collation unnecessarily asked—
 applies.*

Where a plaintiff asks for
 quential relief, though it is enough for his purposes to

—Ss. 7 (iv) (c) and 8 (c)—*Plaintiff suing for de-
 claration, and praying for injunction besides other
 reliefs—Power of Court to rectify plaintiff's valuation—*

Where the plaintiff sues for a declaration and
 for, besides other reliefs, a perpetual injunction
 consequential relief flowing from the declaration, the
 suit, so far as it relates in these two reliefs, is a suit for
 a declaration with a consequential relief within the

that purpose may hold such enquiry as it thinks fit
*(Bartley and Anon Ali, JJ.) ANATH NATH
 BANERJEE v. KALINATA THAKURAIN*

42 O.W.N. 504—1 L.R. (1938) 2 Cal 64—
 A.I.B. 1938 Cal 865

—S. 7 (iv) (c)—*Suit falling under—Person in
 possession of an item of gifted property seeking cancel-
 lation of gift deed—Valuation*

Where a suit falls under S. 7 (4) (c) of the Court fees
 Act, the plaintiff cannot put any arbitrary value on his
 consequential relief. Where a person in possession of
 an item of gifted property sues for a declaration and
 consequential reliefs of cancellation of the gift and
 possession of the remaining
 Court fee only on the value
 of which is asked for. (*N/s
 v. LALSINGH.*)

—S. 7 (iv) (c)—*Ss.
 failing to fix value of suit for purposes of court fee but
 separately valuing his suit for jurisdictional purposes
 at certain sum—Such sum, if should be taken as value
 of relief for purpose of court-fee.*

The assessment of court-fees on a suit falling under
 any of the clauses of S. 7 (iv) depends on the amount
 shown in the plaint or memorandum of appeal, as the
 case may be, as the value of the suit for purposes of
 court-fee, but this in turn must depend upon a figure to
 be fixed by the plaintiff himself. If the plaintiff fails to
 fix such a figure expressly for court fee purposes on the
 erroneous supposition that the suit is not covered by
 S. 7 (iv) (c) and separately values his suit for jurisdic-
 tional purposes at a certain figure, he should be taken
 as having valued the relief sought by him at this
 amount. He should not be taken as having failed to
 value his relief within the meaning of the section and so
 should not be required to fix the value of the relief for
 the first time. The plaintiff cannot have the benefit of
 a higher valuation for selecting a superior forum for the
 hearing of his case and pay a court fee on a lower valua-
 tion. (*Beckett, J.*) *BEH RAM v. DASONDHA SINGH*

val

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of the Court Fees Act, if the valuation appears to be
 arbitrary and unreasonable. But a Court should not
 endeavour to correct a plaintiff's valuation except in a
 clear case where the disparity is so great as to show that
 the plaintiff has not endeavoured to fix a fair value at all,

COURT-FEES ACT (1870), S. 7 (iv) (c).

unreasonable
 right litigated.
 1011RAM SITA-
 38) Nag. 658—
 1938 N.L.J. 327 (F.B.).
*Suit for declaration that defend-
 execute certain decree—Valua-*

ion that the defendant was not
 entitled to execute a certain decree falls under S. 7 (iv)
 (c) of the Court Fees Act, and it is for the plaintiff to

—S. 7 (iv) (c)—*Suit for declaration of title to
 provident fund money and for injunction—Proper
 valuation on valuation—Retrusion.*

ed for a declaration of title of
 provident fund money and for
 defendant from withdrawing

that money, it cannot be said that there is no objective
 standard of valuation, and the correct valuation of the
 relief claimed is the amount of the provident fund. If
 in such a suit the Court accepts the plaintiff's valuation
 holding that the exact money value of the claim cannot
 be ascertained, and the provident fund money exceeds
 its pecuniary jurisdiction the Court in trying the suit
 will exercise its jurisdiction wrongly and its decision
 accepting the plaintiff's valuation is open to revision
 under S. 115, C.P. Code (*S.K. Ghose, J.*) *URMILA
 BALA v. DINAPANI BISWAS.*

177 I.C. 893—
 11 R.C. 287—42 O.W.N. 192—
 A.I.B. 1938 Cal 161.

relief coming under Art. 17 (iii) of the second schedule
 of the Court fees Act, or whether it is a decree with
 consequential relief governed by S. 7 (iv) (c) of the
 Court Fees Act, depends not on whether or not the
 plaintiff was a party to the decree which he is seeking to
 avoid but on whether or not the relief claimed comes
 under S. 42 of the Specific Relief Act (*Thomas, C.J.,
 Zia-ul-Haque and Yoke J.*) *BEPIN SINGH v.
 BHAGWAN SINGH*

177 I.C. 550—11 R.O. 54—
 1938 M.A. 692—1938 O.W.N. 889—
 1938 O.L.R. 425—A.I.B. 1938 Oudh 201 (F.B.).

—Ss. 7 (iv) (c) and 8 (c)—*Suit for rectification
 of solenama on which preliminary decree was made in
 partition suit—Valuation by plaintiff—If final*

In a suit for rectification of a solenama upon which a
 preliminary decree was made in a partition suit, on the
 ground of fraud or mutual mistake of parties, the value
 of the property which would be affected by the preli-
 minary decree which would be made in the partition
 suit if the plaintiff ultimately succeeded in his suit,
 cannot be taken as an objective standard for the purpose
 of determining the value of the relief in the suit. In the

*declaratory decree and injunction—Power of Court to
 correct plaintiff's valuation*

In a suit for a declaration of title to a certain property
 and for an injunction falling within Cls. (c) and (d) of
 S. 7 (iv) of the Court-Fees Act, the amount of court-fee

COURT-FEES ACT (1870), S. 7 (iv) (f).

is, no doubt, computed according to the amount at which the relief sought is valued in the plaint. But where it is possible for the Court on the facts stated to question the plaintiff's valuation, it can exercise its powers of correction.

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tion of partnership and accounts—Appeal—Court-fee payable—Rasi

Where a defendant prefers an appeal against a final decree in a suit for dissolution of partnership and accounts he has to pay Court fee on the amount mentioned in the final decree valuation put in the plaint uncertainty about the amount after the final decree (*Grove v. DANDAS RANGOPAL*).

S 7 (iv) (f)—Suit for Appeal—Valuation—If to be as may be changed

An appellant against a decree dismissing a suit for an account cannot in appeal change his valuation when the subject matter of the appeal is the same as in the trial Court. The scheme of the Court-fees Act does not allow the plaintiff to change in appeal the valuation adopted by him in the plaint in the trial Court. (*Leach, C. J., Varadachariar and Pandrang Row, JJ.*)

NARAYAN CHETTI v. PERIAPPAN

L.L.R. (1938) Mad. 1031—48 L.W. 454—178 I.C. 158—2

A.I.R. 1938 Mad. 887—(1938) 2

S. 7 (iv) (s)—Applicability—Appeal by defendant—Court fee—Preliminary decree and appeal against final decree—Distinction as regards Court fee payable.

A defendant appealing from a preliminary account has to stamp his memorandum

appeals against the amount of cases where he appeals only against a portion of the decree S. 7 (iv) (f) applies to appeals by a defendant. (*Leach, C. J., Varadachariar, Burn, King and Venkataramana Rao,*

for partition of lands and properties.

Where the suit is by a junior member for partition of the Thavazhi properties, for the partition of the Court fee payable, the point whether on the date of suit the defendant's possession was possessed

Thavazhi. If he is not in such possession, Court-fee should be paid under S. 7 (v). (*Varadachariar J.*)

MANAVEDAN v. MANAVEDAN. (1938) M.W.N. 131—A.I.R. 1938 Mad. 474

S. 7 (v)—Applicability—Suit for possession—Defendant challenging plaintiff's title, and plaintiff anticipating possible defence on that ground—Suit, if one for possession or falls under S. 7 (v) (c)—Court fee. See COURT-FEES ACT, S. 7 (v) (c) and (d).

III Pat L.T. 977—A.I.R. 1938 Pat. 22 (S.B.).
S. 7 (v) and Sch. II Art 17 (vi)—Applicability—Suit for possession by partition—No joint possession—Property not joint family property—Court-fee.

COURT FEES ACT (1870), S. 7 (v) (d).

If a person is out of possession of property to which he considers he is entitled on the strength of any right, title or interest that he claims in relation thereto, and seeks to obtain possession thereof from the person who

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cation

APPEAL TO REVERSE AIR. 1938 J. 101, 11 TO THE COURT FEES ACT. (*Addison and Din Mahomed, JJ.*) Mr. SAT BHAWAN v. RAM KISHEN SINGH.

I.L.W. 1938 Lah. 240—176 I.C. 762—

11 E.L. 235 (2)—40 E.L.R. 27—

A.I.R. 1938 Lah. 275.

A.I.R. 1938 Mad. 278—(1938) 1 M.L.J. 29.

S. 7 (v) and Sch. II, Art 17 (vi)—Suit for possession of temple properties—Court fee payable.

In a suit for possession of lands and buildings against the defendant alleging that the plaintiff is a Mahant of certain temple and that the property mentioned in the plaint is owned by the idol which is installed in that temple and that the defendant has taken illegal possession

property, still, however, is subject to and provided where the properties are not capable of being valued

directly productive of any income for the temple (*Jas Lal, J.*) HARI DAS v. RAJA RAM. 40 P.L.R. 113.

S 7 (v) (d) and Oudh Civil Rules, R. 1 (d) and (iv)—Suit against trespasser by tenant for possession—Calculation of market value.

Where a suit is by a tenant to recover possession from a trespasser, it falls under cl. (v) (d) of S. 7 of the Court fees Act and the market value has to be calculated according to R IV of the Oudh Civil Rules, R. 1 (1) has no application to such a case (*Yarker J.*) BHULAI v. GAYA DIN. 174 I.O. 550—1938 R.D. 488—

1938 O.L.R. 195—1038 O.A. 423—

1938 A.W.R. (O.O.) 42—10 R.O. 275—

W.N. 453—A.I.R. 1938 Oudh. 139.

and (e)—Suit by under proprietor and with building and guava grove thereon—Separate court fees—If payable.

A person claiming under proprietary rights in land by virtue of a permanent lease executed in his favour brought a suit for possession of the land and the building and a guava grove thereon. The building was not a tenant's house or any other building necessary for the enjoyment of the land but a substantial structure used as a tannery. Similarly the trees were not self grown but were planted.

Held, that in such circumstances the building and grove could not be said to be appurtenant to the land and hence a separate court fee under S. 7 (v) (e) should be paid on the market value of the building and the grove.

COURT-FEES ACT (1870), S. 7, (v).

(*Thomas and Zia-ul-Hasan, Jfs.*) JWALA DEVI v. AHMAD HASAN. 172 I.C. 297=1938 O.W.N. 23=1938 O.A. 123=10 E.O. 168=A.I.R. 1938 Oudh 40.

—S. 7, Cl. (v) (e) and Sch. II, Art. 17 (6)—
Suit for possession of temple on an agreement for management by estate on Court fee

(b) of the Court-Fees Act. The temple in question stands as a temple and has no market value of the Act. (*Arya Lal*)

—S. 7 (xi) (cc)—

mer tenant who set up a title in himself.

S. 7 (xi) (cc) applies only to a suit by landlord for recovery of immovable property from his tenant, which includes a tenant holding over after the determination of the tenancy. P purchased a house and asked D who was a tenant of his predecessor to attorn to him. D repudiated P's title and set up a title of his own. On D continuing to set up his title, P gave him a notice to vacate the house. D refused to do so and brought a suit for recovery of the house from D. The suit was based on title and was not a suit for possession.

—S. 7 (xi) (cc) and Sch. I, Art. 1—Applicability—
Suit for possession from tenant—Decree—Award of compensation for improvements—Appeal by plaintiff against improvements—Court fee payable

In suit for possession of properties if decree is passed conditional on the payment of a certain sum of money for value of improvements, the plaintiff appealing against the decree awarding compensation, there being no question about possession, must pay court fee on the value of improvements. The subject of the appeal is the value of improvements and not possession of land as in the suit in the lower Court, and it is not therefore enough if the appeal be valued as a suit for possession. (*Madhavan Nair O.C.*)

—S. 7

capital assets

Court to enquire into plaintiff's valuation

In a suit brought by the plaintiff on behalf of himself and as representative of the estate of a deceased person, the Court is to enquire into the plaintiff's valuation of the property.

treating the suit as falling under the Court Fees Act, to enquire into the value of the property if it is of opinion that the subject-matter is wrongly valued. Even if the plaintiff's valuation is redundant and S. 7 (iv) (c) does not apply, it is open to the Court to consider the value of the property in order to determine the proper forum. (*S. K. Chatterjee*)

Y. D. 1938—31

COURT-FEES ACT (1870), S. 11,

J.) KUMUDINI KANTA MUKHERJEE v. MUNICIPAL COMMISSIONER OF THE BARASAT MUNICIPALITY.

42 C.W.N. 315.
—S. 10—Court-fee—Question as to—Time for determination

for the Court to determine the time for payment of court-fee until the order passed in A.I.R. 1935 Lah. 15 RAM v. SOHAN S=11 E.L. 354=1938 Lah 311.

—S. 11—Applicability—Administration suit by a creditor—Other creditors impleaded as defendants before preliminary decree—Court granting not whole of their claim but only dividends at certain percentage of it—Court fee payable by them

The Court Fees Act is a fiscal statute and must be construed accordingly. It is, therefore, not applicable to an administration suit by a creditor against a debtor. It is the plaintiff who is liable to pay court fee for the proceedings. Other creditors impleaded as defendants are not liable to pay court fee.

administration of the estate of a deceased debtor, other creditors are impleaded as party defendants before the preliminary decree and they set out in their written statements their claims against the estate of the deceased aggregating to certain amount, but the Court has allowed certain dividends to be paid to the creditors on a basis of certain per cent. upon the amounts found to have been due to them, those creditors cannot be ordered to pay court fees upon the entire amount of their claims.

—(as amended in Madras) S. 11—Applicability

—Suit for possession and mesne profits past and future—Decree awarding specific sum for past profits and also awarding future profits at definite rate per year—Non-direction of inquiry into mesne profits—If in contradiction of O. 20, R. 12—"Final decree"—Application for execution—Court-fee on future profits—Pay-

movable property with the Court by its decree. The plaintiff is liable to pay court fee prior to suit and also on the suit until delivery of possession at the rate of Rs. 60 per annum, without directing any inquiry at all. Plaintiff applied for delivery of possession and also for award of mesne profits.

an inquiry, to pass a decree finally determining the

COURT-FEES ACT (1870), S. 11.

amount of profits payable subsequently to the suit, if it

RAN CHETTI.

I L R (1938) Mad 1050 =

1938 M.W.N. 286 = 47 L.W. 308 =

A I R. 1938 Mad. 727 = (1938) 1 M.L.J. 750.

—S. 11—Court-fee ordered to be paid by decree not paid—Application for execution—If maintainable.

The mere fact that court fee had not been paid on a decree granted does not prevent the decree holder from making an application for execution and all that S. 11 provides is that the decree should not be executed. 34 Bom. 189 and A.I.R. 1930 Nag. 241, Rel. on. (*Dalip Singh, J.*) **UTTAR CHANDKAPUR AND SONS v. SAYAD HANID ALI.** 178 I.C. 202 =

—S. 12 and C.P. CODE :

against order returning plaint per Court—Determination of jurisdiction—If barred by S

Where a plaint is returned for presentation to the proper Court, as being beyond the Court's jurisdiction and an appeal is preferred against that order, it is open to the appellate Court to go into the question relating to the court fee and decide that the lower Court had juris-

does not apply where there is a... which the suit section would a of principle, be impaired by S. MOTILAL v. S. 11

—S. 12—

Subsequent variation of.

When a Court has p correct court fee payable it is not open to that Court at the instance of a party 1 M.L.J. 89 and (1935) 69 M.L.J. 439, followed (*Pandurang Row, J.*) **DURGIAH, In re.** 48 L.W. 461 = (1938) 2 M.L.J. 547

—S. 12—Scope—Interference—Appeal requiring ad valorem court-fee filed as miscellaneous appeal and allowed—Application by respondent after remand for stay of proceedings until payment of proper court-fee—Order rejecting—Revision—Interference. See COURT-FEES ACT (AS AMENDED IN BIHAR AND ORISSA), SCH. I, ART. 1 AND SCH. II, ART. 11.

18 Pat.L.T. 864.

—S. III (11)—Deficit court-fee—Realisation—Powers of appellate Court—Appeal with reference to part only of subject matter of suit.

Where only a part of the subject-matter of the suit is the subject of appeal and is before the appellate Court, that Court acting under S. 12 (1) of the Court Fees Act can realise the deficit court fee only in respect of that part and not on the entire subject matter of the suit (*Venkatashubha Rao and Abdur Rahman, J.J.*) **SECRETARY OF STATE v. SUBRAMANIAN CHETTIAR.** I L R (1938) Mad 309 = 177 I.C. 904 = 47 L.W. 70 = 1938 M.W.N. 169 = A I R. 1938 Mad. 278 =

(1938) 1 M.L.J. 29.

—S. 13—Refund—Appeal from decree under O. 20, R. 12 (2)—Remand—Right to refund of court fee. See COURT FEES ACT (AS AMENDED IN BIHAR AND

COURT-FEES ACT (1870), S. 19-D,

ORISSA), SCH. I, ART. 1 AND SCH. II, ART. 11.

15 Pat.L.T. 864.

—S. 13—Scope of—Refund of court fee paid in lower appellate Court—Power to order.

The words of S. 13 of the Court-Fees Act do not appear to contemplate the grant of a certificate in respect of court fee paid in the lower appellate Courts. (*Pandurang Row and Abdur Rahman, J.J.*) **SIVANAGALINGAM PILLAI v. AMBALAVANA PILLAI** (1938) M.W.N. 161 = 47 L.W. 300 =

A I R. 1938 Mad 479.

—S. 17—Applicability—Suit by assignee of mortgagee rights against mortgagee, mortgagor and his surety—Separate court fees—If payable.

S. 17 of the Court-Fees Act is inapplicable to a suit by an assignee of mortgagee rights against mortgagee, the mortgagor and his surety, as the cause of action is of reparation.

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—S. 17—"Distinct subjects"—Two reliefs claimed alternatively on the same cause of action—If to be valued separately for purposes of court fee—Separate court fee—Necessity.

Where two reliefs are claimed in the alternative in a suit, they cannot be combined in the meaning of "distinct subjects" in respect of a set-off, his reversion.

174 I.C. 983 = 47 L.W. 64 = 10 R.M. 749 = 1937 M.W.N. 1252 = A I R. 1938 Mad. 241 =

(1938) 1 M.L.J. 139.

—S. 17—Sale of land—Suit by plaintiff for its possession as owner or in alternative by pre-emption—Court fees.

If a plaintiff prays for one of two reliefs in the alternative, based on one cause of action, the value of the suit for purposes of court fee is determined by the higher of the two reliefs claimed. Where the plaintiffs sue for possession of land alleging that they are the owners and that defendant No. 2 had no right to sell it to defendant No. 1 and pray in the alternative that if they are not found to be the owners, they have a preferential right of pre-emption there is only a single cause of action in the suit, namely, the sale of the property by defendant No. 2 in favour of defendant No. 1; but in respect of this cause of action two reliefs are claimed in the alternative. To such a suit, S. 17 of the Court Fees

trustee for other coparceners—Death of coparceners—Application by survivors for Letters of Administration—Liability to pay court-fee—Claim to exemption as trust property—Sustainability—Sch. I, Art. 11.

COURT-FEES ACT (1870), Sch. I, Art. 1.

—Sch. I, Art. 1 and Sch. II, Art. 17 (III)—*Declaration and consequential relief—Province of Court as to—Examination of plaint allegations when justified.*

The position with reference to court fees is that where as it is not permissible to a Court to insist on the plaintiff claiming a consequential relief when he has deliberately omitted to claim it and has confined himself to claiming a declaratory relief only and thus insist on the payment of *ad valorem* court-fee, it is equally clear that the question of court fee has got to be decided on the allegations contained in the plaint and not necessarily by looking at the relief only and the manner in which it has been clothed. Where the plaintiffs ask for a declaration that certain mortgage decrees are null and void and ineffectual, but whose allegations in the plaint in effect amount to asking for the cancellation of the mortgage bond on the basis of which the decree was obtained, *ad valorem* court fee has to be paid. (Collister v. RAO. I

A.I.R. 1938 All. 481.

—Sch. I, Art. 1—Inapplicability—Appeal from order granting or refusing letters of administration—Court-fee payable. See COURT-FEES ACT, SCH. I, ART. 11.

—Sch. I, Art. 1—Order of Court-fee See C. P. CODE, S. 144.

1938 Rang. L.R. 635.

—Sch. I, Art. 1—Order under S. 144, C. P. Code—Appeal—Court-fee. See C. P. CODE, S. 144.

42 C.W.N. 152

—Sch. I, Art. 1—"Subject-matter"—Appeal—Demand for additional court fee—Fail with—Dismissal of appeal—Second appeal—Valuation—Subject matter—If of suit—Court-fee payable.

and the court fee second appeal. appellate Court. Court held that the appellant had

COURT-FEES ACT (1870), Sch. II, Art. 11.

47 L.W. 356—A.I.R. 1938 Mad 498—(1938) 1 M.L.J. 662.

—Sch. I, Arts. 4 and 5—Applicability—Appeal—Dismissal for non-payment of printing charges—Application for restoration—Court fee—C. P. Code, O. 41, R. 19 and O. 47, R. 1.

An application for restoration of an appeal dismissed for non-payment of printing costs should be treated as an application for review and not as an application under O. 41, R. 19 and should be required to be stamped under Arts. 4 and 5 of Sch. I, Court-Fees Act. (James, J.)

—Sch. I, Art. 11—Applicability—Hindu joint family—Death of coparcener—Application by survivors for Letters of Administration in respect of undivided property—Court-fee—Liability to pay. See I.D. 17 Pat 542.

—Inapplicability—Appeal from letters of administration—Court-fee payable. See COURT-FEES ACT, SCH. II, ART. 11. 1938 Rang. L.R. 72.

—Sch. II, Art. 1(d)—Applicability—Application for non-payment of Court-fee, SCH. I, ARTS.

19 Pat L.T. 17.

—Sch. II, Art. 11—Appeal from order granting or refusing letters of administration—Court fee payable.

The court fee payable on a memorandum of appeal presented to a High Court from an order refusing or granting letters of administration or probate of a will is Rs. 2 under Art. 11, Sch. II of the Court-Fees Act.

Sch. II, under R. AND

T. 864. —Mesne profits Executing Court for recovery—

directed under the amount of ascertains the amount and of such amount, the order C. P. Code, an appeal from Art. 11 of Sch. II of the presented to the High Court with a court fee stamp of J.) BALARAMCHARYA v. 178 I.C. 251—11 R.B. 33—416—A.I.R. 1938 Bom. 320.

—Applicability—U. P. Agricultural—Appeal under—Court fee AGRICULTURISTS' RELIEF ACT, 1932—A.I.R. 1938 All. 14. —Applicability—U. P. Encumbrance—Decree under—Appeal—FEES ACT, SCH. I, ART. 1. (1937) A.L.J. 1373—1938 A.W.R. (H.C.) 22 (F.B.).

COURT-FEES ACT (1870), Sch. II, Art. 17.

—Sch II, Art. 17—*Restoration of possession*
 been dispossessed, nevertheless falls under Art. 17 of Sch. II of the Court Fees Act. The restoration of possession is a suit for specific performance of a contract.

A.I.R. 1938 Nag. 300

—Sch II, Art. 17 (vi)—*Contract to execute deed*
 bared Estate—*See* 1

COURT-FEES ACT (1870), Sch. II, Art. 22

of *Mutwalli*
 prays for the possession at 17 (vi) of the (*Gruer, J.*)
 ASALAIHAN v. DASHHERKHAN, 1938 N.L.J. 357 = A.I.R. 1938 Nag. 537.

—Sch. II, Art. 17 (vi)—*Contract to execute deed*
 'suit in respect of joint properties belonging to plaintiff and defendant—*Suit for specific performance—art-fees.*
 The plaintiff sued for specific performance of a contract to execute a deed of trust in favour of certain

1938 O.W.N. 1018 (1) = 1938 O.L.R. 458 = 1938 A.W.R. (O.C.) 122 (1) = 1938 O.A. 767

—Sch. II, Art. 17 (iii)—*Applicability—Suit by party to a decree to declare it illegal and void—Consequential relief, if implied* *See* COURT-FEES ACT, S. 7 (v) (c) AND SCH. II, ART. 17 (iii)

1937 O.W.N. 1186 = A.I.R. 1938 Oudh 1 (F.B.)

—Sch. II, Art. 17 (vi)—*Applicability—Appeal*

—Sch. II, Art. 17 (vi)—*Suit for partition of joint family property—Plaint alleging joint possession of parties—Court fee.* *See* COURT FEES ACT, SS 7 (iv) (d) AND ART. 17 (vi) 40 P.L.R. 2.

—Sch. II, Art. 17 (vi) and § 7 (iv) (b) and (c)—*Suit for partition—Plea by defendant that part of property does not belong to joint estate—Court fee payable on plaint.*

The proper court-fee payable on a plaint in a suit for partition of joint family property is not for family

reliefs claimed are incapable of Art. 17 (iv) of Sch. II applies the two reliefs, separate court (*Stone, C. J., Griffe and Bait,* RAMCHANDRA, I.L.R. (1938) Nag. 423 = 177 I.C. 274 = 11 E.N. 133 = 1938 N.L.J. 269 = A.I.R. 1938 Nag. 423 (F.B.)

fee is not 7 (iv) of NYUN v. O 794 =

10 R.R. 428 = A.I.R. 1938 Rang. 76

—Sch. II, Art. 17 (vi) and S. 7 (v)—*Suit for*

40 P.L.R. 27.

executed on the joint family property is not for family

—Sch. II, Art. 17 (6)—*Applicability—Suit for*

for appointment of plaintiff defendant—No prayer for possession.

! Appeal—Court fee payable.

CR. P. CODE (1898), S. 106,

ordinarily objectionable when the accused is convicted only of some petty offence, such as one under S. 3 (12) of the Town Nuisance Act, that he should also be

—S. 106—Applicability—Offence involving breach of the peace—Offence under S. 3 (12), Town Nuisance Act.

An offence under S. 3 (12), Town Nuisance Act is an offence for the purposes of S. 106. *BALIAN, In re.* 19

A.I.R. 1938 Mad. 795—(1938) 2 M.L.J. 152
—Ss 106 and 514—Bond with sureties—Forfeiture—Extent of respective liabilities.

In the Code of Criminal Procedure the expression always means a bond with sureties and there is no reason why the liability of a surety under the Criminal Procedure Code should be differentiated from that of a surety under the

bond, be he principal or surety cannot be ordered to pay anything more. (*Hamilton, J.*) *ABDUS SATTAR v. EMPEROR.* 1938 O.A. 586—1938 O.W.N. 676—

11 R.O. 7—1938 A.C. 55—1938 O.L.R. 355—
178 I.C. 948—39 Cr.L.J. 831—
A.I.R. 1938 Oudh 195.

—S. 106—Order under—Legality—Accused convicted of mischief.

An order under S. 106, Cr. P. Code, cannot be legally passed in a case where the accused has been convicted of an offence under S. 426, I. P. Code, as the offence of mischief of which he is convicted does not involve a breach of the peace (*Zia ul-Hasan, J.*) *RAM KOOP v. EMPEROR.* 1938 O.W.N. 1127—

1938 A.W.R. (O.C.) 126—1938 O.A. 906—
1938 O.L.R. 509.

—S. 106—Order under—Legality—Conviction under Ss 147 and 323, I. P. Code.

S. 106, Cr. P. Code, as amended, no doubt, excludes

Code, are also convicted under Ss 147 and 323, I. P. Code, both of which involve a breach of the peace, an order under S. 106, Cr. P. Code, could properly be made owing to their conviction under Ss 147 and 323, (*Zia ul-Hasan, J.*) *MANNI LAL v. EMPEROR.*

173 I.C. 386—1938 O.A. 158—

39

—Ss. 107

possession by Civil Court under O. 39, R. 9, C.P. Code—Subsequent dispute as to possession—Proceedings by Criminal Court—If to be under S. 107 or S. 145—Duty

delivery of possession by the Civil Court and is between the parties to that delivery, the more appropriate step is

CR. P. CODE (1898), S. 107.

to bind down under S. 107 the party who has been dispossessed by the Civil Court. But if the delivery is an old one or the dispute is between a party who has been dispossessed by the Civil Court and a party who is served on the locality, it must be taken to be an effective dispossession of the zamindar, and the Criminal Courts must help the party put in possession in retaining that position.

footing. But in such cases the magistrates must take it as an indisputable fact, once delivery of possession is proved, that on the day of the delivery the party who was put in possession was in possession as against a person who was a party to the delivery and was bound by the writ. They must start with the presumption that the state of things which existed on that day continued to exist.

—S. 107—Object of.

The object of the provisions contained in S. 107, Cr. P. Code, is prevention and not punishment of offences, it is intended not to punish persons for anything that they have done in the past, but to prevent them from doing in future something which might occasion a breach of the peace. (*Guha and Lathbridge, J.J.*) *SETH SUKHLAL KARNANI v. EMPEROR.* 66 C.L.J. 584.

—S. 107—Petition under—Reference to police for preliminary enquiry—Power of Magistrate.

There is nothing in the Cr. P. Code, which forbids a Magistrate before whom information has been lodged for taking proceedings under S. 107, to refer the matter to the police for preliminary enquiry. *A.I.R. 1928 Lab. 694, overruled. (Young, C.J. and Tek Chand, J.) ISMAIL v. JAGAT SINGH.* 40 F.L.R. 579—
A.I.R. 1938 Lab. 861.

—S. 107—Proceedings under—Forum. *See CR. CODE, Ss. 12 AND 107.* 176 I.C. 784—
A.I.R. 1938 Nag. 448.

—S. 107—Proceeding under—When may be taken.

Before taking action under S. 107, the Magistrate has to satisfy himself that a person is likely to commit a breach of the peace or disturb the public tranquillity. The object of the provisions contained in S. 107 is prevention and not punishment of offences; it is intended not to punish persons for anything that they have done in the past, but to prevent them from doing in future reach of the peace. *ILAL KARNANI v. —* 39 Cr.L.J. 992—
A.I.R. 1938 Cal. 583.

—S. 107—Proceeding under—When may be started.

The law provides for a proceeding under S. 107, Cr. P. Code, to be started at any time after the delivery of possession by the Civil Court and is between the parties to that delivery, the more appropriate step is

SETH SUKHLAL KARNANI v. EMPEROR.

66 C.L.J. 584.

CR. P. CODE (1898), S. 109.

CR. P. CODE (1898), S. 110.

An order under S. 109, Cr. P. Code, cannot be passed against a person on the ground that it is not safe in the interests of justice to allow him unrestricted personal liberty. Such a ground is not one contemplated by the section. (*Bartley and Edgley, JJ.*) KALI PADA DAS v. EMPEROR 42 C.W.N. 816

—S. 109—Scope and applicability—Concealment, if possible when local residence is known—Section if contemplates continuity in concealment.

S. 109, Cr. P. Code is one restrictive of liberty and precautions there can be a concealment even if residence within the local limits is well known and no hard and fast rule could be laid down as regards the continuity of the concealment for it is a question of fact in each case. (*Gruer, J.*) GANPATI v. EMPEROR 39 Cr L J 747=11 E.N. 708=176 I.C. 820=A.I.R. 1938 Nag 465.

—S. 109 (a)—'Concealing'—If refers to isolated act.

Per *Jack, J.*—The word 'concealing' in Cr. P. Code, refers to continuous concealment. Isolated act of concealment (*Jack and P. SUPERINTENDENT AND REMEMBRANCE AFFAIRS, BENGAL v. ISABALI* I.L.R. (1938) 2 Cal 221=42 C.W.N. 588=176 I.C. 722=39 Cr L J 647=11 E.C. 1=A.I.R. 1938 Cal 409.

—S. 109 (a)—'Concealing'.

A person was walking along the watchman on the alert, until his attention should be called on his way. He did not hide there apparently in the hope for an inanimate object or watchman happened to turn his

I.R.N. 54=39 Cr L J. 745=A.I.R. 1938 Nag 303.

—S. 109 (b)—'Satisfactory account'—Interpretation.

The expression "has failed to give a satisfactory account of himself" in S. 109 (b), Cr. P. Code means a satisfactory account of his presence at the place and in the circumstances in which he was found, and not merely a satisfactory account of himself generally. Where a person is arrested in extremely suspicious circumstances and fails to give a satisfactory account of himself, the Magistrate may commit him to custody. (*Jack and P. SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS, BENGAL v. ISABALI* I.L.R. (1938) 2 Cal 221=42 C.W.N. 588=176 I.C. 722=39 Cr L J 647=11 E.C. 1=A.I.R. 1938 Cal 409.

—S. 110—Initiation of proceedings under—Vague and general allegations by tenants of oppression by zamindar spread over several years—If ground for

A.I.R. 1938 Pat 533.

—S. 110—Proceedings under—Previous conviction—If necessary—Habitual offender—Proof of.

A previous conviction is not necessary for proceedings under S. 110, Cr. P. Code. There is no such provision in the Code. The hand lays down in *Man is an habitual offender of general repute or* (*Man v. KHUDA* 22=175 I.C. 522=70 R.L. 732=39 Cr L J 599=A.I.R. 1938 Lah.

different that they can within Cl (d) itself the alternative, and wording of Cl (d) is necessary be read discretely and a person who cannot give a satisfactory account of himself is not necessarily a

CR. P. CODE (1898), S. 110.

—S. 110—Scope of—Application of limited to strangers to a locality—Proof of previous convictions, if necessary.

There is nothing in the wording of S. 110 or of any other section of the Cr. P. Code, that leads to the inference that S. 110 can only be used where the parties are strangers to the locality in which the offences are committed. If the persons, or the acts which they commit, are such as to make it difficult to deal with them under the ordinary provisions of law then S. 110 can be used. Proof of a certain number of prior convictions is not a prerequisite to a person being bound over under this or similar sections (*Horwill, J.*) SHANNUGAN ASARI v. EMPEROR. 47 L.W. 196=

175 I.C. 417=10 R.M. 777=30 Cr.L.J. 588=

A.I.R. 1938 Mad. 482=1938 M.W.N. 93=

(1938) 1 M.L.J. 178.

—S. 110 (e) and (f)—Applicability—Leaders of local factions.

Where the accused is a leader of a local faction, rival factions arming themselves and their supporters and settling disputes by force—If can be bound over.

Clauses (e) and (f) of S. 110, Cr. P. Code, are not inapplicable to leaders of rival factions who use to arm themselves and their supporters and attempt to settle their disputes by force with the result that breaches of the peace often result and are still more frequently threatened. Such persons can be bound over under S. 110 (e) and (f). A man is not any the less dangerous to the community because he lives in a house and owns lands (*Horwill, J.*) MANA v. EMPEROR.

1938 M.W.N. 213=175 I.C. 491=10 R.M. 783=

39 Cr.L.J. 595=A.I.R. 1938 Mad. 448

—S. 110 (e) and (f)—Applicability—Offences involving breach of the peace—Persons in the habit of waylaying women working fields and attempting to rape them—Order binding them over—If justified.

Before a person can be bound over under S. 110 (e), Cr. P. Code, he must be found to have committed offences of which a breach of the peace is a necessary constituent. An assault is clearly an offence involving a breach of the peace and clearly an attempt to rape does involve an assault upon the person against whom this offence is committed. Persons who habitually attempt to rape women and are in the habit of waylaying women working in fields, and attempting to rape them are habitually committing offences involving a breach of the peace and are desperate characters whom it is dangerous to leave at large. An order binding them over under S. 110 (e) and (f) (*Horwill, J.*) VEERA

1938 M.W.N. 6

—S. 112—Order under—Contents—Non-mention of

CR. P. CODE (1898), S. 133.

ency for action being taken—Police evidence—Admissibility.

In view of proviso 4 to S. 117 of the Cr. P. Code, a finding in regard to a charge under S. 110 (f) of the Code can be based on evidence of general repute of the person proceeded against. The section does not say in what manner evidence is to be given. The evidence of police witnesses with regard to the general repute of the person proceeded against is not inadmissible. The question as to what is a man's reputation is a question of fact and may be spoken to by any one who knows

—S. 120—Commencement of period of security—Stay of order to furnish security pending appeal—Dismissal of appeal.

Where the provision of an order to furnish security is herefrom, and date of compliance is required, possibly after of the Magistrate (*Hamilton*, 8 O.A. 566=

A Cr.O. 54=

1938 O.L.B. 355=176 I.C. 948=39 Cr.L.J. 831=

A.I.R. 1938 Oudh 195.

—S. 132—Scope—Police officers acting under Ch. IX—Bar to prosecution of.

S. 132, Cr. P. Code, is a bar to the prosecution of police-officers purporting to act under Ch. IX of the Code without the sanction of the Local Government. It is not necessary that the accused (*i.e.*, police officers) should prove the existence of an unlawful assembly. (*King, J.*) ELAYA PILLAI v. ARULANANDAN PILLAI.

1937 M.W.N. 1243.

—Ss. 133 and 139-A—Absence of conditional order—Failure to make enquiry under S. 139-A—Final order—Legality.

Where a Magistrate without making a conditional order under S. 133, Cr. P. Code, issued a notice calling upon the opponents to show cause why action under S. 133 should not be taken, and where the opponents appeared and denied the allegations and the Magistrate even then did not issue a conditional order, nor did he make an enquiry under S. 139-A but recorded evidence and passed what purported to be a final order restraining the opponents from committing the acts complained of it was held that the Magistrate had disregarded completely the procedure laid down by the Code and that it was impossible to justify the order. (*Weston*,) CHHITAR MAL v. SULEMAN. 1938 A.M.L.J. 4.

—S. 133—Applicability—Long standing obstruction.

public interest. The fact that an obstruction has been

CR. P. CODE (1898), S. 133.

—S. 133—*Discretion of Magistrate—Right of private person to insist on order under section—Refusal by Magistrate—Remedy.*

Whether or not an order should be passed under S. 133, Cr. P. Code, is a matter of discretion for the Magistrate and no private person has a right to insist that a Magistrate shall pass such an order. If the Magistrate does not choose to pass an order under the section, the remedy of the aggrieved party is normally in the Civil Court. (*Allsob. J.*) *ALI AHMAD v. EMPEROR.* 1937 A W R 866=1937 A Cr O 165

—Ss 133, 137 and 139 A—*Issue of conditional order under S. 133—Procedure to be followed thereafter*

the right to proceed to enquire into the matter. The

1938 A Cr O 105=1938 A L J 1013=
A I R 1938 All 653

—S 133—*Magistrate ordering party obstruction or appear before him—Party appears—Power of Magistrate to send case Magistrate for disposal.*

Where a Magistrate orders under S. 133 causing obstruction or nuisance either to remove the

—S. 133—*Order under—If an injunction.*

A conditional order under S. 133 does not amount to injunction. (*Stone, C. J. and Vivian Bose, J.*) *HAR- GOVIND DULLABH JIWAN v. KIKABHAI RAHIM- TULLAH.* I L R 1938 Nag 348=176 I O 257= 11 E N 45=A I R 1938 Nag 84

—S 133—*Power to direct removal of obstruction in public pathway* See CR. P CODE, SS 147 (2) AND 133. 1938 N L J 139

—S 139 A—*Filing of written statement—Failure to question opponent—Effect.*

When a written reply has been filed by the opponent, the mere omission of the Magistrate to question him as required by S. 139 A, Cr. P. Code, on points to which he had already replied, is not the omission of an essential formality justifying interference on a reference. (*Weston*) *HANUMAN DAS v. DISTRICT BOARD ENGINEER AJMER* 1938 A M L J 2

—S 139 A—*Object and scope of—Right of private party to ask for enquiry into rights of parties.*

The provisions in S. 139 A, as to the holding of enquiry are intended to protect the rights of a person against whom it is proposed to pass an order under

—S. 139 A—*Scope of enquiry under.*

The law does not contemplate the decision by a Magistrate, making a summary enquiry under Chap X,

CR. P. CODE (1898) S. 144.

Cr. P. Code, of any question of title upon weighing evidence produced on both sides. All that he is required to do under S. 139 A, Cr. P. Code, is to hold an enquiry merely to satisfy himself that there is or is not some *prima facie* evidence to support the evidence of the denial of the public right (*Mulla, J.*) *MT. CHUNNI v. EMPEROR.* 1938 A W R (H C) 640= 1938 A Cr O 105=1938 A L J 1013= A I R 1938 All 653.

—S 139 A (2)—*Existence of public right—Denial proved—Duty of Magistrate—Magistrate, if can direct a party to file a civil suit.*

According to S. 139 A (2), Cr. P Code, if a magistrate on enquiry finds that there is any reliable evidence in

suit. (*Gruer, J.*) *BIHARI, In re.* 176 I O 755= 39 Cr. L J 791 (1)=11 E N 77= A I R 1938 Nag 512.

144—*Applicability—Dispute relating to land procedure—Proceedings under S. 144—If justified.*

Where the dispute obviously relates to Immoveable

KUMAR GHOSH

19 P L T 620= A I R 1938 Pat 610.

—*Value of as to possession.*
P Code, does not establish
(*ad Noor and Varma, J.J.*)
EMPEROR

715=1938 P W N 542= P. 100=39 Cr L J 778= A I R 1938 Pat 369

—S. 144 (4)—*Power of superior Magistrate under—Order made against party called upon to show cause—If can be altered into one against other party not so called upon—Revision—Interference—Order spending itself out—If bar to revision*

Cl 4 of S 144, Cr P. Code, contemplates only a change in the nature of the order made and not a change in the party against whom it is made. The order can be absolved only against the party who is called upon to show. It is no doubt open to a superior Magistrate under S. 144 (4) to rescind an order made by a Subordinate Magistrate against a party who was called upon to show cause, but it is not open to him to alter the order into one against the other party who was never called upon to show cause. Such an order is manifestly prejudicial to such party who has never been called upon to show and is liable to be set aside in

the Magistrate on the question of possession are simply incidental observations in order to enable the order made. No inference can be drawn from the order

CR. P. CODE (1898), S. 144.

possession of any particular party, having regard to the peculiar jurisdiction conferred by the section, though the fact of the order may be admissible in evidence under S. 13 of the Evidence Act. (*Dhale, J.*) JAINUDDIN AHMAD SHEIKH v. KARI KANT DOSS.

1938 P.W.N. 390

—S. 144—Scope—Mandatory order—Power of magistrate to pass—Order directing party to remove fence from land—If authorized.

Where a party has already taken possession of a disputed plot of land and put up boundary pillars and fence round it, a criminal Court cannot start proceedings under S. 144, Cr. P. Code, with a view to dispossess him from the disputed land. No doubt S. 144, Cr. P. Code gives a magistrate the power to pass an order to prevent an immediate breach of peace, but the section does not authorise him to pass a mandatory order to remove the fence. All that a magistrate can do under the section is to direct any person to abstain from a certain act or to take certain order without certain property in his possession or under his management. The section, in other words empowers the magistrate to pass a restrictive order, and the removal of the fence is not act which the magistrate of the section to direct a party to do. (*Chatterji, J.*) BIMALA KANTA BAGCHI v. SANAT KUMAR GHOSH. 19 P.L.T. 620—A.I.R. 1938 Pat. 610.

—S. 144—Scope—Procession taken by Adi-Dravidas along streets occupied by caste Hindus—When to be restrained

There can be no doubt that Adi-Dravidas have a civil right to take a procession along all public streets, just as any other persons may have, and caste Hindus have no right to object at all. Ordinarily, those responsible for law and order should see that the exercise of such rights is supported by the police and the Magistracy except in cases where in the interests of peace persons have to be prevented from the Adi-Dravidas conduct to irritate and annoy the caste. Magistrate may properly pass a restrictive order. (*Horswill, J.*) v. PONNUSWAMI IYER. 1938 M.W.N. 606—177 I.C. 436—39 Cr. L.J. 886—11 E.M. 326—A.I.R. 1938 Mad. 714—(1938) 2 M.L.J. 160.

—S. 144—Value to be attached to orders passed in proceedings under.

Orders passed in proceedings under S. 144, Cr. P. Code, cannot, of course be taken as decisive of the rights of either of the parties, but the nature of the proceeding and its conclusions may be referred to when the history of the property is in question. (*Dhale, J.*)

—S. 144—Joint Magistrate not only rescinding that order but making new orders—Jurisdiction of.

While it is open to a superior Magistrate to alter or rescind the order of an inferior Magistrate, he cannot

CR. P. CODE (1898), S. 145.

inhibiting some of them from entering a temple without a written consent from the trustee.

Held, that the above orders of the joint Magistrate were without jurisdiction and hence declared to be null and void. 42 M.L.J. 352—1937 M. 487, Foll. (*Pandurang, Rao, J.*) RAMASWAMI AIYANGAR v. RAMASWAMI PATRACHAR. 1938 M.W.N. 974—(1938) 2 M.L.J. 509.

—S. 145—Applicability—Possession delivered by Civil Court under O. 39, R. 9, Cr. P. Code—Subsequent dispute—Proceedings under S. 145—Discretion—Duty of Criminal Court to recognise delivery by Civil Court. See CR. P. CODE, SS. 107 AND 145. 1938 P.W.N. 626.

—S. 145—Breach of peace—Apprehension of—Duty of Magistrate to record finding.

If a magistrate in his preliminary order had specifically found that the dispute was likely to cause a breach of the peace, it is not necessary for him to repeat in the essential final order that such an apprehension exists. The requisite to give the magistrate jurisdiction under S. 145, Cr. P. Code, is that he should be satisfied that a dispute exists regarding land or water before he makes the preliminary order. Once he is so satisfied, his subsequent action relates to procedure and not jurisdiction and in this aspect not liable to be upset on revision by the High Court. (*Ram Lal, J.*) GURDITTA v. TAJA. I.L.R. 1938 Lah. 611.

—S. 145—Breach of peace—Finding of magistrate—Interference by High Court.

The High Court will not interfere lightly with the finding of a Magistrate as to an apprehension of a breach of the peace when it is based on evidence and the duty of weighing evidence is one purely for the trial Court. (*Ram Lal, J.*) GURDITTA v. TAJA. I.L.R. 1938 Lah. 611.

—S. 145—Costs—Award of, long after disposal of

Row, J.) NARAIAN v. KRISHNAMURTHI. 1938 M.W.N. 1011—49 L.W. 444 (1)

—S. 145—Jurisdiction—Delivery of possession by Civil Court—Proceedings under section—Jurisdiction to start.

It cannot be laid down as a hard and fast rule that a Magistrate has no jurisdiction to start a case under S. 145, Cr. P. Code, once there has been a delivery of possession by the Civil Court. (*Noor, J.*) RAJENDRA NARAYAN BHANJ DEO v. CHINTAMANI MAHAPATRA. 1938 P.W.N. 526—10 Pat. L.T. 632.

—S. 145—Order under—Revision by High Court—Interference.

The High Court does not interfere on revision with orders under S. 145, Cr. P. Code, on the merits as a rule. (*Dhale, J.*) BABU RAM PANDEY v. SHYAM DEO NARAIN. 1938 P.W.N. 810.

—S. 145—Procedure—Claim by landlord and by

CR. P. CODE (1898), S. 145.

CR. P. CODE (1898), S. 145.

Disposal of funds. Out of court settlements. Dismissal under S. 203—If proper.

The only case in which a Magistrate can refuse to take action under S. 145, Cr. P. Code, is when he is not satisfied that there is a danger of a breach of peace where the police report is to the contrary and he is satisfied with it, his duty is to issue notices and proceed according to sub-S. (4). Magistrate considers the evidence given in a

Where there are actually no grounds whatever of the Magistrate's being so satisfied in view of the facts, and there is a failure on his part to comply with the provisions of S. 145 (4) of the Code, the

order cannot be sustained. The parties must be given an opportunity to file statements and the inquiry then proceeded with. (*Lakshmana Rao, J.*) PEDDA GIDDA-SANI v. ACHIGADU. 1938 M.W.N. 824 = 178 I.C. 251

—S. 145—Scope—Dispute between parties claiming joint possession—Jurisdiction of Magistrate to deal with.

A dispute between two parties claiming to hold joint possession of the property in dispute is not outside the scope of S. 145, Cr. P. Code, and a magistrate has consequently jurisdiction to deal with the matter under the section (*Madan, J.*) *Madan v. Amirul Hasan*.

—S. 145—Scope—Jurisdiction of Magistrate

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—S. 145 (1)—“Actual includes constructive possession

The words “actual possession” in S. 145, Cr. P. Code, can only mean possession in fact as distinguished

—S. 145 (2)—“Immovable property”—Paddy crops cut and stored in khalihan—Dispute as to possession of—Proceedings under S. 145—Jurisdiction to draw up.

Paddy crops cut and stored in a khalihan do not come within the term “immovable property” within the meaning of S. 145 (2), and a dispute as to possession of such crops does not give a Magistrate jurisdiction to draw up proceedings under S. 145, Cr. P. Code (*Chatterji, J.*)

RAJINDRA LAL v. BRICH KURMI.
1938 P.W.N. 643 = 19 Pat L.T. 728 = A.I.E. 1938 Pat 527.

—S. 145 (4)—Attachment of property

management of the property. Another reason for which a “receiver” endowed with powers under the Civil

CR. P. CODE (1898), S. 145.

Procedure Code, should not be appointed is that the proceedings under S. 145 are intended to be carried through without delay and the time during which the subject of the dispute needs to be under attachment is so short as certainly not to justify the appointment of a receiver having the powers of a receiver under Civil Procedure Code. (*Macneay, J.*) MAUNG SAN v. MAUNG LU GALE. 174 L.O. 951

39 Cr.L.J. 481-10 H.R. 45
A.I.R. 1938 Rang.

—S. 145 (4)—*Jurisdiction—Order in favour of person not party to proceedings—Legality.*

An order in favour of a person who is not a party to the proceedings is not warranted and is without jurisdiction. (*Dhauke, J.*) DABU RAM PANDEY v. SHIVAM DEO NARAIN. 1938 P.W.N. 810

—S. 145 (4)—*Summoning of witnesses—Duty of Magistrate.*

The duty of the Magistrate acting under S. 145 is to decide whether there is likely to be a breach of peace.

mean anything more than that the receive evidence actually put before him but does not require him to summon instance of the parties who are unable

his duty to summon them of him that he should summon not he thinks he needs them.

clear that the procedure prescribed mandatory and that if a Magistrate sub-S. (4) and decides the question parties was in possession at the date under sub-S. (1) it is not necessary whether or not any of the parties has

—S. 145 (4), second proviso—*receiver—Power of Court*

Per Birwat, J.—Strictly speaking, which is arguable whether or not a 'receiver' can be appointed in any proceeding under Chapter XII except under S. 146, Cr. P. Code. Even though a receiver may not be appointed consequent on an attachment made rate is comm- custody of (*issat, J.J.*)

42 C.W.N. 351.

CR. P. CODE (1898), S. 147.

—S. 145 (4), second proviso—*Order for attachment pending decision of another Court—Legality.*

An order for attachment under S. 145 (4), second proviso, Cr. P. Code, can be operative only until the decision of the Magistrate himself under that section. An order be operative until pending in other is of the proviso. FAIZUR RAHMAN v. 42 C.W.N. 351.

—S. 145 (4), second proviso—*Order of attachment—When may be made.*

It is only after drawing up a proceeding in terms of sub S. (1) of S. 145, Cr. P. Code, that the Magistrate acquires jurisdiction, to make an order of attachment under the last proviso to sub S. (4). (*Mukherjee and Birwat, J.J.*) FAIZUR RAHMAN v. SHAFIKU ADLEY. 42 C.W.N. 351.

—S. 145 (6)—*Effect of order under—Who are bound—Order against a party—Subsequent application*

ch they were bound by the by them is not maintain- MUNESHWAR BAKSH

1938 O.A. 635-1938 O.W.N. 828-
1938 O.L.B. 401-1938 A.C.C. 83-
11 R.O. 40-11 Cr.L.J. 868.

—*Proceeding under S. 147—Road in ne party—Order in*

road, proceedings out finds that the

without a discussion and failure to give reasons for being unable to come to a definite conclusion make the order of attachment bad. (*Zia ul Hasan, J.*) MUNIR AHMAD v. MAHMUD UL HAQ 1938 O.W.N. 673-
1938 A.C.C. 83-1938 O.A. 942-
1938 A.W.R. (C.C.) 134.

—S. 147—*Applicability—Disputes about right to worship as pujari in temple—Order in respect of—Jurisdiction of Magistrate.*

CE. P. CODE (1898), S. 147.

A dispute about the right to worship as puja in a temple is a dispute which comes within the provisions of S. 147, Cr. P. Code, as it is a dispute regarding an alleged right of use of a land or building. — S. 147

S. 147 The dispute in actual fact may have more to do with what a man does in the temple after entering into it and not so much with his actual entry into the temple; but since the right is inseparably connected

47 L W 305 = 176 IO 127 =
(1938) 1 M W N. 348 = 11 R M 32 =
39 Cr L J. 705 = A I R 1938 Mad. 637 =
(1938) 1 M L J. 817.

— S. 147 (2), and 133—Mandatory order—If can be passed under S. 147 (2)—Removal of obstruction—Procedure.

Under S. 147 (2), Cr. P. Code, a power to make an order in the nature of an injunction for the removal of an obstruction lawfully used by the public, under S. 133 to bring about its removal.

SYED USMAN ALI v. EMPEROR
I L R 1938 Nag. 580 = 1938 N L J. 139 =
175 IO. 234 = 10 R N. 410 = 39 Cr L J. 584 =
A I R 1938 Nag 297.

— S. 154—First information report—Entry in

proceedings on the point of a statement inadmissible as evidence for any purpose in Court. (Tehchand and Ram Lal, J.) AHMAN v. EMPEROR.

40 F L R 697 = A I R. 1938 Lah. 787.
— S. 154—First information report—What amounts to—Extrinsic value of such report

S. 154, Cr. P. Code, does not necessarily contemplate that only one information of the crime should be recorded as first information report but all information given to police before investigation is started may amount to first information report within the meaning of that section.

evidence by or contradicted by accused is his name in the presence (A) EMPEROR

— S. 162—Admissibility—Statement of witnesses during investigation who were made to whom them

Where during investigation were made to whom before the officer ul-Hatan, J.)

1938 A

CE. P. CODE (1898), S. 162

— S. 162—Applicability—Oral statements by accused to C. I. D. Officer—Admissibility—Evidence Act, S. 25.

Statements made by a person who is investigated of information of investigation, to such statements. The fact that the statements are oral makes no difference, because oral statements no less than written statements come within the purview of S. 162, Cr. P. Code. When such statements made by the investigating officer are admitted in evidence, it is not necessary to show that the statements were made in an offence, by the investigating officer and not by any other person. (J. J. Raw, J.)

APPAYYA v. GOPALAKRISHNAYYA
1938 M W N. 825 = 48 L W. 322 =
A I R 1938 Mad. 893.

— S. 162—Applicability—“Statement made in course of investigation”—Meaning of.

The question whether a statement was recorded during investigation or not is a question of fact. Where a statement is made in the course of a shooting incident, if a shooting incident has taken place, it is not necessary to show that the statement was due to accident or that the person making the statement is at the house takes place there, it cannot be said that the statement is recorded by him in the course of the investigation, so as to make it inadmissible in evidence. It is only after recording that statement that the Sub Inspector can have any real information about the commission of a cognizable offence. (Burn and King, J.)

W.K. WESLEY v. EMPEROR.
1938 A W R (H M) 505 = 1938 A Cr O. 80 =
1938 A L R. 827 = 178 IO 183 =
A I R 1938 All 871.

— S. 162—Construction and scope—“Any person”—Previous statement by accused—Admissibility and use of—Rule as to—Admission and previous statements of witness—Distinction—Previous statement of accused amounting to confession—Admissibility.

S. 162, Cr. P. Code has no reference whatever to the admissibility of statements made by a person merely codified as to the use of statements which may be made by a party to a case, but which may differ fundamentally from a statement made by a witness. The relevant fact is that a statement is not the statement, but is to corroborate the oral testimony of the witness or it may be put to him in cross-examination.

oral testimony of the witness or it may be put to him in cross-examination.

CR. P. CODE (1898), S. 145.

Procedure Code, should not be appointed is that the proceedings under S 145 are intended to be carried through without delay and the time during which the

39 Cr.L.J. 484—10 B.R. 451—
A.I.R. 1938 Rang. 88

—S. 145 (4)—*Jurisdiction—Order in favour of person not party to proceedings—Legality.*

An order in favour of a person the proceedings is not warranted. (*Dhale, J.*) BABU RAO DEO NARAIN. 1938 Cr.L.J. 484

—S. 145 (4)—*Summoning of witnesses—Duty of Magistrate.*

The duty of the Magistrate acting under S. 145 is to decide whether there is likely to be a breach of the

and not with the parties to decide what evidence is necessary to be called. In S. 145 provision as to be found in Code. The amendment to Cl. 2 mean anything more than that receive evidence actually put before but does not require him to sum instance of the parties who are unable to bring their witnesses to Court. It is the duty of the Magistrate to obtain such evidence as is requisite to enable him to form a reasonable opinion on the matter before him; it may be that this will entail his summoning the witnesses mentioned by the parties and if so, then it is certainly his duty to summon them. It does not however require of him that he should summon the witnesses whether or not he thinks he needs them. (*Mackney, J.*) A. MEAH v. STEEL BROTHERS & CO., LTD. 176 I.O. 268—11 B.R. 40—39 Cr.L.J. 708—A.I.R. 1938 Rang. 229.

—S. 145 (4) and Proviso.—*Relative scope of*

clear that the procedure prescribed mandatory and that if a Magistrate sub-S. (4) and decides the question parties was in possession at the date under sub-S. (1) it is not necessary whether or not any of the parties has been despoised within two months next before the date of the order (*Zia-ul-Hasan and DWAKKA SINGH* 1938 Cr.L.J. 484)

—S. 145 (4)

receiver—Power of

Per *Biswas, J.* which is arguable appointed in any person under S. 146, Cr. P.

CR. P. CODE (1898), S. 147.

—S. 145 (4), second proviso—*Order for attachment pending decision of another Court—Legality.*

An order for attachment under S. 145 (4), second pro-

(*Mukherjee and Biswas, JJ.*) FAIZUR RAHMAN v. SHEIKH LADLEY. 42 C.W.N. 351.

—S. 145 (4), second proviso—*Order of attachment—When may be made.*

It is only after drawing up a proceeding in terms of Code, that the Magistrate

an order of attachment (*Mukherjee and Biswas, JJ.*) FAIZUR RAHMAN v. SHEIKH LADLEY. 42 C.W.N. 351.

—S. 145 (6)—*Effect of order under—If no are bound—Order against a party—Subsequent application*

5, Cr. P. Code, ex parte order under S. 145 (6)

and subsequently mutation was made in the name of the applied under S. 145, applicant, it was held to the prior proceedings were bound by the them is not maintain- UNESHWAR BAKSH

SINGH v. GAJJA SINGH. 1938 A. 635—1938 O.W.N. 828—

177 I.O. 247—1938 O.L.B. 401—1938 A.C.R. 11—11 B.O. 40—39 Cr.L.J. 868.

—S. 145 (6)—*Proceeding under S. 147—Road in dispute found to be private road of one party—Order in form under S. 145 (6)—If justified.*

Where in a dispute regarding a road, proceedings under S. 147 are started and the Court finds that the disputed portion of the road is the private road of one party, the appropriate order to be passed is a declaration that the road was not a public road and the prohibition directed against the opposite party. Where instead of

DHANSAAR COAL

—4 B.R. 329—19 P.L.T. 325—1938 Pat 133.

—S. 146—*Attachment under—Valid grounds for—Inability to come to a finding*

147—*Applicability—Dispute about right to pujara in temple—Order in respect of—Jurisdiction of Magistrate.*

CR. P. CODE (1898), S. 147.

A dispute about the right to worship as pujari in a temple is a dispute which comes within the provisions of S 147, Cr. P. Code, as it is a dispute regarding an alleged right of user of any land as explained in S 145 (2). Where the dispute is regarding a right which is inseparably connected with the use of any land or building it must be regarded as being within the purview of S. 147. The dispute in actual fact may have more to do with what a man does in the temple after entering into it and not so much with his actual entry into the temple; but since the right is inseparably connected

—Ss 147 (2), and 133—Mandatory order—If can be made under S. 147 (2)—Removal of obstruction—Procedure.

Under § 147 (2), Cr. P. Code, a power to make an order in the nature of an injunction for the removal of an obstruction lawfully used by the public, under S 133 to bring about its removal.

SYED USMAN ALI v. EMPEROR
I L R 1938 Nag 580 = 1938 N L J 139 =
175 I C 231 = 10 B N 440 = 39 Cr L J 584 =
A I R 1938 Nag 297

—S 154—First information report—Entry in diary mentioning names of culprits given by P.W.

Where when the Sub Inspector left the thana before the first information report was given.

amounts to—Exemplary value of such report.

§ 154, Cr. P. Code, does not necessarily contemplate that only one information of the crime should be recorded as first information report but all information given to police before investigation is started may amount to first information report within the meaning of that section. The first information report may be given by any person.

—S 161—Statement made in answer to requisition by investigating officer under—If privileged—See PENAL CODE S 499, IXC 9. 47 L W. 136

—§ 162—Admissibility—Statement of witnesses during investigation who were made to sign them.

Where during the investigation, certain statements were made to sign the statements which it before the officer, their evidence is inadmissible.

ul-Hasan v. Emperor

CR. P. CODE (1898), S. 162

—S 162—Applicability—Oral statements by accused to C. I. D. Officer—Admissibility—Evidence Act, S. 25.

Statements made to a C. I. D. officer who is investigating an offence of which he has received information are statements made during the course of investigation, and S 162, Cr. P. Code would apply to such statements. The fact that the statements are oral makes no difference, because oral statements no less than written statements come within the purview of S. 162, Cr. P. Code. When such statements made by the accused are not made in the presence of a Magistrate or a police officer, they are not admissible in evidence. If the statements are made in the presence of a Magistrate or a police officer, they are admissible in evidence. If the statements are made in the presence of a Magistrate or a police officer, they are admissible in evidence. If the statements are made in the presence of a Magistrate or a police officer, they are admissible in evidence.

L W. 322 =
Mad. 893.

not made in

course of investigation"—Meaning of.

The question whether a statement was recorded during investigation or not is a question of fact. Where a statement is recorded during investigation, it is admissible in evidence.

of a shooting incident. A shooting incident has taken place at the house of the accused. The statement was due to accident. The statement was recorded at the house of the accused. The statement was recorded at the house of the accused. The statement was recorded at the house of the accused.

be said that the statement is recorded by him in the course of the investigation, so as to make it inadmissible in evidence. It is only after recording that statement that the Sub-Inspector can have any real information about the commission of a cognizable offence (Burn and King, J.) MYIASWAMI CHETTY v. EMPEROR, 1938 M W N. 905 = (1938) 2 M L J. 750.

—R 162—Contradiction—Conditions necessary.

the other is that the statement of the police should be proved by a certified copy of the diary (Bennet, J.) W.K. WEST v. EMPEROR.

1938 A W R (H C) 505 = 1938 A Cr C. 90 =
1938 A L R. 827 = 178 I Q 183 =
A I R 1938 All 571.

—S 162—Construction and scope—"Any person"

—Previous statement by accused—Admissibility and use of—Rule as to—Admissions and previous statements of witness—Distinction—Previous statement of accused amounting to confession—Admissibility

S. 162, Cr. P. Code has no reference whatever to the law as to the use of statements which may be made by a witness.

Statements made by a witness in the presence of a Magistrate or a police officer, they are admissible in evidence.

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material allegation of fact must be the subject-matter of the statement. This foundation cannot be ignored or lost sight of.

OR P. CODE (1898), S. 162.

ing evidence to show that the true admission. It will then be for the Court to weigh the evidence afforded by the admission against the evidence produced at the trial by the defence. An accused against whom a previous statement by him is tendered in evidence is entitled to have the whole statement placed before the Court. If that statement, taken as a whole amounts to a confession the whole statement must be excluded. It is not permissible to place a part of a single statement as a mere admission or series of admissions and to omit merely the confessional part of it. If the statement tendered in evidence does not contain any admission of the offence charged nor indeed an offence of any kind, and there is no indication whatever that it is part of a larger statement making any admission of guilt, it is admissible in evidence against the accused of the truth of the facts stated therein.

Manohar Lal, J. ■ 162 Cr. P. Code, is necessary corollary to Ss 160 and 161, and must be read along with those two sections. It was never the intention of the Legislature that these three parts should be read as

code dealing with the arrest of the accused or issuing summonses or warrant to the accused. The question of admissibility of the statement of the accused is governed by the general provisions of the Evidence Act. (Court-

the witness in fact had stated, be borne in mind and the Court the matter is cleared up in reduty of the Public Prosecutor to answer of the investigating of statement of a witness does not create a wrong impression of what the witness stated before the police. He must in these cases bring about other statements to explain the matter referred to in the Public Prosecutor fails to do Court in fairness to the case as bring about facts which will el

by police.

Where the police after investigation into a complaint did not take any action and thereafter the complainant preferred a complaint to a Magistrate which was almost identical with the one made to the police and the Magistrate framed charges on lesser offences which

OR. P. CODE (1898), S. 164.

were however included in the more serious offences in-

the Court as a result of the police investigation, it was held that there was nothing in S. 162 restricting it to cases sent up by the police and the defence was entitled to such copies and that there was no reason to deprive the defence of the privilege, because it had happened that charges of non-cognizable offences had been framed. (*Weston*) MANGLA ■ JASSI

1938 A. M. L. J. 108.

—S. 162—Statement to police—Admissibility—Person making statement dead at time of trial.

A statement made to the police is not admissible in evidence, although the person who made the statement is dead at the time of the trial. (*Ram Lal, J.*) SUNDAR LAL v. EMPEROR. 40 P. L. R. 421.

—S. 162—Statement of witness in Court that he identified accused before Police Officer—Admissibility.

A statement made by a witness in Court that he identified the accused before the Sub Inspector of Police, is not inadmissible under S. 162, C. P. Code. According to that ruling a statement made by a witness to a Police Officer.

(*M. C. Ghose and Bartley, J.J.*) LELA LALUNG v. EMPEROR. 42 O. W. N. 620—68 C. L. J. 103.

—S. 162—Statement of witnesses recorded in police diary—Burden of rebuttal.

When the statement of a witness is recorded in the police diary, the burden of rebuttal is on the accused. The witness is interested and what he could easily have

that which results is sought to be PEROR. 36-39 Cr. L. J. 68 = R. 1938 Nag 120.

—S. 162 (1). Proviso—Construction—Proof of statements formally—If condition precedent to use of statements.

the statement by calling the witness. (*Griffith, J.*) R. 20 N. L. J. 280 = 30 Cr. L. J. 68 = 10 R. N. 169 = A. I. R. 1938 Nag. 110.

—S. 164—Confession—Oral proof by Magistrate—Admissibility.

Oral proof by a Magistrate of a confession which he could have recorded is inadmissible, for when the Legislature has prescribed a particular mode of proof, no

CR. P. CODE (1898), S. 164.

other method will suffice. A.I.R. 1936 P.C. 253, F-11
(*Young, C.J. and Ram Lal, J.*) AKBAR BADR
v. EMPEROR 40 P.L.R. 890=177 I.C. 51
11 B.L. 339=39 Cr.L.J. 907 ('
A.I.R. 1938 Lah.

—S. 164—Confession recorded at 9 p.m. and accused afterwards not remanded to judicial lock-up—Value of confession.

Where the confession had been recorded by the Magistrate at 9 o'clock in the night and the accused was not remanded to the judicial lock-up after the confession had been recorded.

Held, that the confession was not of
(*Almond, J.C. and Mir Ahmad A.J.C.*)
CHAND P. EMPEROR. 174 I.C. 449=10 II
39 Cr.L.J. 448=A.I.R. 1938 Pesh. b.

—S. 164—Confession recorded under—Procedure—

f the criminal
provided S. 164 of the Cr. P. Code is complied with
(*Burna*)

—S. 164—Duty of Magistrate recording confession—Reasons for believing confession voluntary—If to be stated.

It is not enough for a Magistrate recording the confession of an accused to give him a warning, but it is essential that he should put questions to call self that the confession was in fact voluntary. Question with its answer must be recorded. enough that the Magistrate was satisfied as confession being voluntary, but the Courts before the confession used must have materials on which they can be satisfied that the confession was in fact voluntary. Hence the Magistrate who records the

—S. 164—Recording of confession—Subsequent custody of accused.

they may be handed over to the Police for that purpose. There certainly ought to be an interval between the taking of the confession and the handing over of the accused to the Police for any subsequent purpose. (*Young, C.J. and Monroe, J.*) SURAT SINGH v. EMPEROR. II Lah. 740=40 P.L.R. 214=174 I.C. 804=39 Cr.L.J. 475=10 B.L. 600=A.I.R. 1938 Lah. 292.

—S. 164—Requirements—Compliance with—Sufficiency.

Y. D. 1938—33

CR. P. CODE (1898), S. 164.

The accused on his own motion before

S. 164 was not appended to the confession but the Magistrate was examined as a witness and had deposed that he had satisfied himself that the confession was being made voluntarily and that he had told the accused that he need not make any confession to him and that if he made one it would be used against him

—S. 164—Retracted confession—Value.

confessions were retracted and that when they were

—S. 164—Scope—If controls S. 29, Evidence Act—Confession recorded as dying declaration—Warning not administered—Admissibility—Duty of Magistrate.

Where a Magistrate proceeds to record a statement of an injured person under S. 164, Cr. P. Code, without

not bound to make a confession, and should further satisfy himself by further questions that the confession is being voluntarily made. If the Magistrate does not

—S. 164—Statement of witnesses—Right of accused inspect.

A Judge should not decline to allow the pleaders for the defence to see the records of statements made by the prosecution witnesses to a Magistrate under the provisions to cross examine the an elementary principle person shall have free nal to all the records which are before the Court. The same considerations apply to the refusal to permit reference in cross-examination to the contents of charge sheet, for this also forms part of the committal record. (*Robert, C.J. and Dunkley, J.*) BRAHMAYA v. KING.

A.I.R. 1938 Rang. 442.

—S. 164—Statement under—Value of.
A statement of a witness obtained under S. 164 always raises a suspicion that it has not been fairly made. The section was not intended to

CR. P. CODE (1898), S. 164.

police to obtain a statement from some person and as if were to put a seal on that statement by sending in that person to a Magistrate practically under custody, to be examined before the judicial inquiry or trial, and therefore compromised in his evidence when judicial proceedings are regularly taken. (*Dhale and Chatterjee, J.J.*)

EMPEROR v. MANU CHIK. 175 I.O. 716—
4 B.E. 626=39 Cr.L.J. 635=11 R.P. 11—
A.I.R. 1938 Pat 290.

—S. 164—Statement of person to whom pardon has been tendered—Record of—Power of Magistrate taking cognizance of offence.

A Magistrate
the offence
whom par
(*Monroe a*
SINGH.

—S. 164—Statement of person to whom pardon has been tendered—Record of—Power of Magistrate taking cognizance of offence.

It is the duty of a Magistrate to inquire in accordance with the clear provisions of the Code. He must satisfy himself, by asking questions, that the confession was not made under undue influence. Where the Magistrate finds that the accused making the confession was being made of his own free will after ascertaining how long he had been in custody, there is a failure to observe an important provision of the Code intended to safeguard the voluntariness of the confession.

10 R.P. 402=39 Cr.L.J. 302=
18 Pat.L.T. 984=A.I.R. 1938 Pat. 60.

—S. 173—Order striking off case on police report—Nature of.

An order of a magistrate on a police report under S. 173, Cr. P. Code, that a case be struck off is an administrative order and not a judicial order. (*Blacker J.*) BRAHM DEV v. EMPEROR. 40 P.L.E. 239=

175 I.O. 850=39 Cr.L.J. 646=
11 R.L. 1(1)=A.I.R. 1938 Lah 469.

—Ss. 177 and 180—Applicability—Conspiracy—Jurisdiction of Court is determined by the nature of the offence. Conspiracy was formed or made and act in pursuance of conspiracy is done.

Conspiracy is a substantive offence given in one of the illustrations to S. 181.

can it be brought within the meaning of this section itself. It is not one of the offences named in S. 181. The gist of the offence of conspiracy lies not in doing

CR. P. CODE (1898), S. 181.

and in an indictment for conspiracy the venue should be laid where the conspiracy was and not where the result of such conspiracy was put in execution. The criminal conspiracy was formed, that is to say, the offence was committed in U.P., that is, outside the jurisdiction of the Sakkar Court. The accused also entered into a further conspiracy at Sakkar. The accused were however not charged with this second or further conspiracy at all. The two conspiracies were not parts of one transaction.

"The two conspiracies were not parts of one transaction."

within the local limits of his jurisdiction, and to try the case or to commit it to sessions. The fact that the accused was committed to sessions by the District Magistrate does not oust the jurisdiction of the District Magistrate. (*OR v. SINGH*)

—S. 181—Complaint for defamation on ground of deliberate falsity of charge—Jurisdiction—Arrest, if an essential part of charge of defamation.

referred to in S. 179, Cr. P. Code, is an offence with which the accused was charged. Hence that section can apply only to a case where a person is charged with an offence not only by reason of some act committed by him, but also by reason of some consequence which has ensued from the Act. In the absence of any one of these two ingredients, the section would be wholly inapplicable. The section would have no application if the consequence is such that even if it had not taken place, the offence would have been complete. On a complaint for cheating under S. 420, I. P. Code, a warrant for the arrest of the accused at a different place was issued. The accused was subsequently tried and acquitted. But even if the accused had been committed to sessions here, the jurisdiction of the District Magistrate would not have been ousted. (*OR v. SINGH*)

contemplated by S. 179, Cr. P. Code and hence it could not give the Court in that place any jurisdiction to try the offence of defamation with which the opposite party was charged. (*OR v. SINGH*)

it to the place to which he had to bring it does not necessarily constitute the offence of criminal breach of trust although a person may have to account for money; it is not the failure to account, but the misuse of the money for dishonest purposes, which constitutes the

CR. P. CODE (1898), S. 190.

offence. *K* was a partner in a firm *V* at Akyab and there was an agreement by which *K* was to go to Cochin and receive the consignment of rice sent by the firm and sell it there. He was required to submit accounts and pay the net cash balance resulting from

cognizance of an offence that happens to be reported to him by an officer who presides in a Court of Justice (*Allsup, J.*) **TARA SINGH v. EMPEROR.**

1938 A L J 528 = 1938 A Cr. C 45 =
11 B A 158 = 1938 A W R (H C) 361 =
176 I C 860 = 1938 A L R. 689 = 39 Cr L J 840 =
A.L.R. 1938 All. 449.

—Ss 190 (1)(c) and 191—Charge at the instance of Magistrate—Taking cognizance on a Failure to comply with S. 191—Trial, if

When a charge sheet is filed against any instance of the Magistrate and the latter takes cognizance on such charge sheet, though apparently taken cognizance of on a police report, the Magistrate practically amounts to his taking cognizance under Section 190 (1)(c), as he is the real originator of the proceedings. The principle of S. 191 applies to such a case. Failure of S. 191 vitiates the proceedings and is to be quashed (*Colden, J.*) **EMPEROR.**

the Court has been constituted, he is bound to apply that procedure thenceforward and he is not in any way disqualified from proceeding with the trial. (*Burn, J.*)

Necessity.

The terms of S. 192, unlike S. 528 (5) of the Cr. P. Code, does not require that an order of transfer under

CR. P. CODE (1898), S. 195.

that section should be in writing. (*Guha and Biruss, JJ.*)

—S. 192—Transfer by Magistrate not competent to transfer—If cured by S. 529 (f). See CR. P. CODE, S. 529 (f). 42 C W N. 246.

—S. 195—Applicability—Offences requiring sanction and offences not requiring sanction committed in course of transportation—Ships as places of detention.

obtaining of sanction for prosecution of the offences requiring sanction. The law only requires that for the offences sanction of the Court does not say that if in an offence requiring sanction are committed, the sanction is required.

transferred the Court means for some time. The accused were convicted under S. 143, I. P. Code. It was contended that there having been resistance to the sed could not be prosecuted in a lawful assembly or rioting Court which issued the writs

ful assembly was a separate rate charge was permissible it was immaterial that there was no assembly by S. 195, Cr. P. Code

(*Mahomed Noor and Rindand, JJ.*) **SHIO AHI EMPEROR.** 19 Pat. L.T. 665 = 1938 P W N 178 I.O. 487 = A.L.R. 1938

OR. P. CODE (1898), S. 195.

—(as amended in 1923), S. 195—*Procedure under—Sanction for complaint.*

The old system of sanctions is now : Court or officer concerned does not sanction. The Court or officer concerned plaintiff direct. Where therefore a complaint made by the Sub Inspector concerned, sary administrative sanction, no necessary. (*Davis, J.C. and Mehta,* HIRANAND v. EMPFROR.

A.I.

—S 195 (1) (a)—*Complaint in writing of public*

OR. P. CODE (1898), S. 196.

A public servant is not barred from making a com-

—S. 195 (1) (b)—*Applicability—Offence not*

Code, and consequently the proceedings before the Magistrate should be quasi HABIB v. EMPFROR.

10 E.N. 152=172

—S. 195 (1) (a)—*Enquiry—Mode of.*

Per Patterson, J.—The proceedings with a view to under S. 195 (1) (a), Cr. P. form of a public judicial enquiry making a complaint is of course quiry ought to be of a purely administrative character and need not be made in public; nor need the statement of witnesses be recorded on oath. (*Jack and Patterson, J.J.*) RAMESH CHANDRA PODDAR v. HARI MOI PODDAR. 42 O.W.N.

—S 195 (1) (a)—*Orders of Subordinate District Judge—Nature of—Revision.*

—S. 195 (1) (a)—*Petition filed before District Magistrate—Letter sending at for enquiry to Sub Divisional Magistrate—Cognizance of offence under S. 182, I. P. Code against petitioner—Jurisdiction of Sub-*

S. 499, EIGHTH EXCEPTION.

1938 M.W.N. 871 (2) = (1938) 2 M.L.J. 397.
—S 196—*Order sanctioning prosecution—Form of and compliance with.*

Petition to Sub-Inspector
y—Allegation of offences
retention against claim—
ty. See PENAL CODE,

(*Bartley and Khundkar, J.J.*) N. MUKHERJEE, CIR-
CLE OFFICER, VISHNUPUR v. RAMKINKAR PALIT.

67 C.L.J. 583.

—S. 195 (1) (a)—*Refusal to make complaint by Subordinate Judge—Power of District Judge to make complaints—Civil Court pecom, if subordinate to latter.*

an Inspector of Police, authorizing the latter to prefer a complaint and the letter was signed by the Senior Officer in the office of the Deputy Inspector-General for the Deputy Inspector-General. The complaint was accordingly filed by the Inspector to whom the letter was addressed.

CR. P. CODE (1898), S. 196.

Held, the complaint was properly filed and was in accordance with the order sanctioning the prosecution. (Hos...

—Ss 196 A (2) and 195—*Object of conspiracy to commit non cognizable offence—Some of accused parties in proceedings in which offence committed—Sanction, if necessary.*

Where a non cognizable offence is committed and several persons are charged for conspiracy to commit the offence but some only of the accused are parties to the proceedings in which the offence was committed, sanction is not necessary in the case of such accused but is necessary in the case of the others who are not parties to the proceeding. (Young, C.J. and Tek Chand, J.)
EMPEROR v NAND LAL. 40 P L R 815 = 176 I C 654 = 11 E L 221 = 39 Cr L J 765 = A I R 1938 Lah 526.

—S 197—*Applicability—Conditions necessary.*

For S 197 (1), Cr. P. Code, to apply, it must be shown that the accused was a public servant both at the time of the offence and at the time when he is accused, that against t
(Bennet,

—S 197—*Applicability—"Judge"—Village police pater—Offence by in the course of duties while trying case—Prosecution—Sanction of Local Government—Necessity—S. 1 (2)—Scope and effect of.*

A village police pater trying and disposing of a case in exercise of his powers under S. 14 of the Village Police Act of 1967...

be followed by the village police pater is not to be governed by the Cr. P. Code. (Brammont, C.J. and Sen, J.)
EMPEROR v SHANKAR SAYAJI DALVI.
40 Bom L R 1106 = A I R 1938 Bom 489.

CR. P. CODE (1898), S. 202.

—S 197—Prosecution of Sub-Inspector of Police—Previous sanction of Local Government—If necessary. See POLICE ACT, S. 7. 1938 Rang. L R. 104.

—Ss. 198 and 199—*Object of—Husband himself not complaining of offence under S. 494, I. P. Code—Power of Court.*

The purpose of Ss 198 and 199 is to make sure that the offences to which they refer are not made the subjects of complaint except by aggrieved persons.

Where therefore the husband files a complaint under Ss. 363, 342 and 506, I. P. Code, and does not himself complain of an offence under S. 494, I. P. Code, it is not open to the Court to force upon him, as a complainant, the character of an aggrieved husband, which he does not wish to assume. (Davis, J. C. and Havelwala, J.)
EMPEROR v GULAB.

176 I C. 811 = 11 E S. 11 = 39 Cr L J 686 = A I R. 1938 Sind 141.

—S. 200—*Duty of magistrate—Name or number of Act or section—Mistake in—Procedure.*

It would not be right to say that merely because the complainant, whether in ignorance or inadvertence, mentions the wrong Act or mentions the wrong Section, there is no complaint within the meaning of S. 200. It is true that if such errors occur in the complaint, care must be taken at the time of recording the complaint...

mistake is a mistake which can subsequently be rectified. (Davis, J.C. and Mehta, J.)
LILARAST v. WADHUNAL. A I R 1938 Sind 209.

—S 200—*Examination of complainant—Necessity—Report by Judge of Civil Court.*

According to S. 200, Cr. P. Code, it is unnecessary for a Court to examine the complainant when the...

176 I C 960 = 1938 A L R 689 = 39 Cr L J 840 = A I R 1938 All 449.

—S. 200—*Failure to record statement of complainant—If curable under S. 537. See CR. P. CODE, S. 537—EXAMINATION OF COMPLAINANT.*

CE. P. CODE (1898), S. 202.

—■ 202—*Enquiry under—Protracted proceedings deprecated.*

Dilatory and protracted proceedings under § 202, Cr. P. Code are to be deprecated (*and Khundkar, JJ.*) AJIT NATH D CHANDRA KAYAL.

~~—~~S. 202—*Procedure—Direction to clerk to*
Magistrates.

clerk to perform
and making the
must do them himself. (*Weston*) **LADHU v. PHUL**
CHAND. 1937 A M L J. 140

—§ 202—Scope—If applies to transfers under
S. 528.

The first part of S. 202 applies only to cases in which the Magistrate has taken cognizance " " "
not include a case which is transferred " "
under S. 192 comes within the ambit " "
S. 202 but not transfer under S. 528, " "
language is clear it is not for a Court " "
mind of the legislator or to indulge " "
that the case was a transfer under S. 52 " "
when the section was amended. (*Gruer, J.*) QANA-
RALI v. MST, TULSI 178 I.O. 54 = 39 Cr.L.J. 981 =
AIR 1938 Nag. 435

—Ss 202, 203 and 204—Scope—Cognizance of case by Magistrate—Procedure on.

The granting of a summary A, B or C is a mere administrative matter, while the dismissal of the complaint requires a judicial order under S. 203, Cr. P. Code. Ordinarily, when a Magistrate is satisfied that an offence on a complaint, complainant on oath and reduced to writing, and if he is of the opinion that the issue of process, he acts in accordance with S. 203, Cr. P. Code, and then if after inquiry he wishes to dismiss the complaint he acts under S. 203, Cr. P. Code. But that section contemplates that he should exercise his own independent judgment, and if he does not wish to postpone the issue of process, then he acts under S. 204 and the following sections. (Datta. I.C.)

—S 202—Stage for holding engine

A reference under S. 202 cannot be issued has been taken for the complaint. The Magistrate cannot go back to the stage reached by his predecessor. A necessary preliminary to an inquiry under S. 202 is postponement of issue of process. Where that was not done by the first Court, which in fact procured the attendance of the accused, the stage for holding inquiry under S. 202 has therefore passed and cannot be revived subsequently. (*Gruer, J.*) QAMARALI v. MST. TULSI.

—S 203—Revision—Refusal to issue process—

Failure
SS. 435 . .

*Judge
Sessions.*

OR. P CODE (1898). S. 216.

Where an accused, who is being tried by a Magistrate for an offence under S. 409, Penal Code, makes an ap-

—S. 213—Committal—Power and duty of
magistrate.

The Magistrate who having the powers to punish adequately for an offence which is within his jurisdiction fails to do so and commits the accused to Sessions Judge, fails to comply with the provisions of § 254, Cr. P. Code, and the committal may on that ground be held bad as being an error of law. Where therefore the property stolen is water melons of the value of six annas

A.I.R. 1938 Sind 79
—S. 213—Committing Magistrate—Duty of—
Power to weigh evidence.

A committing Magistrate is entitled to, and indeed must weigh the evidence in the case. Although it is not his duty, as it would be in a case which he could try himself, to decide, whether the case has been proved against the accused beyond all reasonable doubt, he

If he is of opinion
the accused on
discharge the ac
2. EMPEROR.

—S. 215—Quashing commitment—Grounds—Insufficiency of evidence on record for conviction.

of law—Meaning.

Under S. 215, Cr. P. Code, a committal can be quashed only if the order of committal is against law, in the sense that there was any error of law in the proceedings of the magistrate before committal. (*Pandrang*

—S 215—*Quashing of commitment—Power of Sessions.*

Magistrate. (Mackney, J.) M. 1. MANSA v. THE

CE. P. CODE (1898), S. 222.

KING.

174 I C 824 = 39 Cr. L. J. 470 =
10 R R 433 = A I R. 1938 Rang. 105.

— 222—Charge of conspiracy under S. 120 B—
Particulars—Necessity.

There is a distinction between the charge of an offence and a charge of conspiracy to commit such an offence. In the former, particulars as required by the Code are necessary. But it is well settled that in stating the

174 I C 613 = 39 Cr. L. J. 417 = 10 R R 602 =

— 222, 233, 234, 23

scope of—Joinder of charges—
conspiracy—Acts done in pursuance of conspiracy—
Separate charge and punishment for—When justified

Ss. 235 and 239, Cr. P. Code, are not controlled by the latter part of S. 233 or by S. committed in the course of the may be tried together, although three in number and extending over a period of more than a year. But there is nothing in S. 235 or 239 to

whether the illegal acts have or have not been carried out. But acts done in pursuance of the conspiracy cannot be separately punished unless these acts are separately charged and particularised as required by the Code. S. 239(4) does not justify omnibus charges relating to an indefinite number of offences alleged to have been committed within the period stated without anything to specify time, place or circumstances or even which of the accused persons are supposed to have committed any particular offence (*Broomfield and Norman, J.J.*)
EMPEROR v. KARANALLI GULAMALLI

40 Bom L R 1092 = A I R. 1938 Bom 481

— Ss 222 and 233—Scope—Alternative charges—

victed under one or other of the alternative charges, they should not be convicted under both (*Davis, J.C. and Lobo, J.*)
EMPEROR v. BALUMAL HOTCHAND

177 I C 316 = 39 Cr. L. J. 890 = 11 R S. 58 =

A I R. 1938 Sind 171

— Ss 222 (1) and (2)—Charge under Ss. 109 and 302, Penal Code—Species of abetment not specified—
Sufficiency of notice to accused

Ss. 222 (1) and (2), Cr. P. Code, require, that the charge should contain such particulars as are reasonably sufficient to give the accused notice of the matter with which he is charged and then given any specific name, name only. So it is open to abetment generally, and

CR. P. CODE (1898), S. 226.

establish abetment other than in one particular form, to rely on this particular form for a conviction. On the facts of the case where the accused was charged with an offence punishable under Ss. 109 and 302, Penal Code,

Held, that it cannot be said that the nature of the case was such that the non-particularisation of the species of abetment charged resulted in withholding such

as, J.J.) HARENDRA KUMAR

CL J 196 =

10 R C. 607 = Cr L J 395 =

A I R. 1938 Cal. 125.

— Ss 225 and 337—Misjoinder of charges—Is

non-criminal deception and becomes one of cheating within the meaning of S. 415, I P. C., and the effect

— Ss 225 and 337—Misjoinder of charges—Is

19 Pat L T 343 = 1938 A L R 809 =

10 R.P.C. 250 = 4 B R 490 = 39 Cr L J 452 =

67 O L J. 161 = 40 Bom L R 787 =

174 I C 1 = 42 C W N 621 =

1938 A W R (P. C.) 116 = 1938 P W N 320 =

1938 A Cr C 27 = 1938 O W N 416 =

1938 A L J 382 = A I R. 1938 P. 130 =

(1938) 1 M L J 647 (P.C.).

— S. 225—Scope—Mistake or doubt as to particular weapons used—Effect—If entitles accused to absolute acquittal—Conviction for lesser offence instead of more serious offence—Sustainability

What is called the benefit of doubt is not the same

aside a conviction. The accused, though they may not be convicted for a more serious offence in the absence of proof of use of particular weapons, may still be convicted of a lesser offence (*King, J.*)
PALANI GOUNDAN v. EMPEROR. 1937 M W N 1331.

— S. 226—Substitution of charge so as to deprive accused of right of trial by jury—Propriety.

Where the committing Magistrate framed charges of murder against some of the accused and abetment of murder against others, but when the case came on for hearing in the Court of Sessions, the Judge substituted

that the

CR. P. CODE (1898), S. 227.

Held, that the accused were not properly tried when they were deprived of a trial by a jury of this kind. (*Cunliffe and Henderson v. EMPEROR*.)

—S. 227 (1)—Addition of charge—
CR. P. CODE, S. 350.

—S. 233—*Joint trial—Legality—*
under Ss. 148 and 333, I. P. Code.

The legality of a joint trial depends upon whether the

CR. P. CODE (1898), S. 235.

Held, that though strictly speaking a joint trial

legal. (*Gruer, J.*) NANA v. EMPEROR.

1938 N.L.J. 90 = A.I.R. 1938 Nag. 283

—Ss. 233 to 239—*Misjoinder—Test of legality.*

The test whether a trial is or is not bad owing to a misjoinder of charges is not the number of offences with which he has been charged. The trial is bad not because the accused has been wrongly convicted but because he has been wrongly tried. It is the multiplicity of charges which vitiates the trial and prejudices the accused in his defence (*Davis, J.C. and Lohia v. EMPEROR*).

BALUMAL HOTCHAND.

39 Cr. L.J. 890 = 11 R.S. 58 =

—Ss. 233 and 537—*Offences*
abducting in respect of same
charges—If necessary.

The charges are not the same

of rape committed either on an indefinite date or between periods extending from six weeks to six months, the time covered being from September 1936 to June 1937. The charge under S. 377 specified an offence committed between end of December 1936 and June 1937. The charges found were either so vague and general as to be bad in law or were in the alternative absurd. Neither of the offences was a continuing offence. The whole story was vague in details and

drivers of several motor lorries—
safety.

lorries were engaged at Calicut in Malabar District to deliver bags of grain at Pollachi in the district of Coimbatore. In some cases the owners and in other cases both the owners and drivers were

—S. 234—*Offences of same kind—Murder and*
grievous hurt.

Murder and grievous hurt are not offences of the same kind and
and *Khundkar*

—S. 235.
323 and 325, I

An offence is
a substantive
there is no illegality
that section in
325, I. P. Code
EMPEROR.

CR. P. CODE (1898), S. 235.

Where hurt is caused to the victim of robbery though not at the time of committing the robbery but subsequent to its commission, during the effort of the offender to get away with the property, a separate charge in respect of the hurt is not sustainable. Robbery by its definition includes hurt caused not only in order to committing of the theft or in committing the theft, but also in carrying away the property obtained by the theft (*Khaja Mahammad Noor and Dhoole, J.J.*) EMPEROR v. HARIA DHOBI. 11 Pat. L.T. 857=10 R.P. 346=172 I.C. 780=4 B.R. 165=39 Cr.L.J. 156=1937 P.W.N. 868=A.I.R. 1937 Pat. 662.

—S. 235—Scope—If controlled by Ss. 222, 233

CR. P. CODE (1898), S. 239.

I.L.R. (1938) 1 Cal. 588=175 I.C. 409=10 R.C. 790=39 Cr.L.J. 596=A.I.R. 1938 Cal. 258.—S. 239—Construction and scope—More than one person charged and tried in same trial—Legality.

The clauses of S. 239, Cr. P. Code, are mutually exclusive in the sense that they cannot be added one to another so as to bring some of the persons charged under one clause and some under another and so to put them upon their trial all together in one and the same time; but they are not mutually exclusive in the sense that persons accused of an offence and persons accused of abetment or of an attempt can only be tried at one trial because their case comes under Cl. (b). But if more than one person are to be tried and charged

—Ss. 236, 237 and 422—Charge under S. 323, I. P. Code, but conviction under S. 452—Legality—Test—Question of prejudice.

Though it is not illegal to convict a man of an offence under S. 452, I. P. Code, in a case in which he has been charged under S. 323, I. P. Code, the wording of Ss. 236 and 237 of the Cr. P. Code yet in each case the question to be asked is whether the accused has or has not been prejudiced in his trial by the fact that the charge was framed under the wrong section. Where there is no appearance that there was a view to ascertain question was a building or not S. 442, I. P. Code, the alteration of the charge cannot in appeal alter the conviction under S. 452, I. P. Code, to one under S. 452, I. P. Code.

—S. 239—Charge under S. 401, I. P. Code—Joint trial of all members of gang—Legality.

In a prosecution under S. 401, I. P. Code, all the members of the gang can be tried together for the offence.

—S. 239—Conspiracy—Each accused charged with one or more of seven specific offences—Legality.

Where a conspiracy is proved, each accused charged with one or more of seven specific offences can be tried together.

—S. 239—Conspiracy—Each accused charged with one or more of seven specific offences—Legality.

Where a conspiracy is proved, each accused charged with one or more of seven specific offences can be tried together.

A joint trial in violation of the express provisions of the Cr. P. Code, is not illegal or void *ab initio* if it does not result in a failure of justice and has not prejudiced the accused in his defence on the merits.

—S. 239—Misjoinder of charges—Question of—

—Defamation by several—Legality—See PENAL CODE, 1938 A.W.R. (H.C.) 467=1938 A.L.J. 769

—S. 239—'Offence'—Meaning of—The term 'offence' under S. 239 includes minor or alternative offences within the meaning of S. 235 (2) or S. 236. (*Davis, J. C. and Haveliwala, J.*) CHUHMAL NIRMALDAS v. EMPEROR. 177 I.C. 280=39 Cr.L.J. 881=11 R.S. 53=A.I.R. 1938 Sind 161.

—Ss. 239 and 342—Scope—Charge of same offence against several persons—Separate trial of one in order to enable him to give evidence against other—If justified—Discretion of Magistrate—Accused separately tried—If competent witness against co-accused tried separately

—S. 239—Conspiracy—Each accused charged with one or more of seven specific offences—Legality.

Where a conspiracy is proved, each accused charged with one or more of seven specific offences can be tried together.

CR. P. CODE (1898), S. 239.

it cannot be said that a Magistrate allowing a separate trial of one of several co-accused acts unjudicially. Such a person who is to be tried separately from the others is not accused for purposes of S. 342, Cr. P. Code, so far as the trial of the other accused persons is concerned and he is a competent witness in the case against them. "Accused" in S. 342 means the accused then under trial and under examination by the Court, and cannot include an accused over whom the Court is

—S. 239—Three "transactions" of same kind—Joint trial—Legality

Under Cl. (c) of S. 239, Cr. P. Code, three offences of the same kind may be tried at once, but not three

piracy and acts done in pursuance thereof—Joint trial: Special considerations attach to a charge of con-

of,
the

1930 O.W.N. 410—1930 A.W.R. 116—

174 I.C. 1—1938 A.W.R. (P.O.) 116—

circumstance which makes the act of one the act of each and all the conspirators) these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it. The common concert and agreement which constitute the conspiracy, serve to unify the acts done in pursuance of it. (Lord Wright.) BABU LAL CHOUKHANI v. EMPEROR.

65 I.A. 158—32 S.L.R. 476—1938 O.L.R. 189—

CR. P. CODE (1898), S. 250.

1938 U.A. 398—1938 M.W.N. 505—
IN Pat.L.T. 343—1938 A.L.R. 309—
10 R.P.O. 250—4 B.R. 490—39 Cr.L.J. 452—
67 O.L.J. 161—40 Bom.L.R. 787—
42 C.W.N. 621—1938 A.C.O. 27—

1938 O.W.N. 416—1938 A.L.J. 382—174 I.C. 1—
1938 A.W.R. (P.O.) 116—1938 P.W.N. 320—

A.I.R. 1938 P.C. 180—
(1938) 1 M.L.J. 617 (P.O.).

—Legality—Stolen prop-

erty of same theft.

the stolen properties in

charged under S. 414,

the same theft, the case

provisions of S. 239 (f),

the accused along with

tries were recovered in

consequently illegal. The irregularity is not such as could be remedied by S. 537, Cr. P. Code. (Jack and Khundkar, J.J.) RAM KHELAWAN KAHAR v. EMPEROR.

42 O.W.N. 729—11 B.O. 113—

176 I.C. 525—39 Cr.L.J. 739—

A.I.R. 1938 Cal 525.

—Scope—Prosecution under Sugar Excise Charge—Necessity—Duty of Magistrate to

ingredients of offence.

ase tried as a summons case, it is of course not on the Magistrate under S. 242, Cr.P. Code,

a formal charge against the accused. But when the prosecution is under an Act of very recent date (the Sugar Excise Duty Act of 1934), with the

as the lawyers

If the Magi-

raises the ingre-

is required to

accused before

LHARI RAM v.

P.W.N. 426—

174 I.C. 631—4 B.R. 602—10 B.P. 634—

r.L.J. 610—A.I.R. 1938 Pat. 440.

e shown by complainant—Duty of

ate does not record any statement

cause against his

but merely states

sufficient. The

by the complain-

—S 250—Discretion of Magistrate—Interference

Meaning—Complaint under S. 452, I. P. Code, trans-

ferred to 3rd class Magis'trate—Power of latter to order

compensation

CR. P. CODE (1898), S. 250

CR. P. CODE (1898), S. 253.

Court but sent to him by a Sub Divisional Magistrate under S. 192 or S. 528, Cr. P. Code. The 3rd Class Magistrate is perfectly competent to deal with the case until he comes either to discharge or to charge with an offence which he is competent to try or to take action under S. 216 Cr. P. Code. If at that stage he considers

tion of Magistrate.

Sub-S (1) of S. 252, Cr. P. Code, refers only to such evidence as is offered on the day when the accused appears or is brought before the Court; it only refers to the initial production of the accused, and not to every

only after considering the cause shown by him that an order can be passed directing him to pay compensation. (*Bazuley, J.*) MA E MYAING v THE KING

1938 Rang L.B. 163=178 I.C. 508=11 B.R. 52=39 Cr. L.J. 743=A.I.R. 1938 Rang 247.—S. 250—Order for compensation—Parties on bad terms—If proves fault of charge.

The fact that the parties are on bad terms is not a sufficient ground for holding that a charge brought by one against the other is a false one, and consequently an order for payment of compensation merely on such ground is without justification. (*Mackney, J.*) MAUNG PAN v. MAUNG MYA DIN. 178 I.C. 199=39 Cr. L.J. 704=11 B.R. 38=A.I.R. 1938 Rang 209

—S. 250—Order under—Omission to record reasons—If vitates proceedings.

It is the duty of the Magistrate ordering compensation to be paid to the accused under S. 250, Cr. P. Code, to record his reasons for passing such an order. The recording of the reasons is a condition precedent to the proper exercise of the power under the section. An order for compensation passed without recording reasons is, therefore, illegal and is liable to be set aside. (*Thomas, C.J.*) BHAGWAN DIN v JAGDAT. 178 I.C. 113=1938 O.L.B. 132=19 Cr. L.J. 288=1938 A.C.R. 26=1 B.R. 39 Cr. L.J. 378=A.I.R. 1938 Rang 209

1938 B.W.N. 288=1938 A.C.R. 26=1 B.R. 39 Cr. L.J. 378=A.I.R. 1938 Rang 209

offence after a certain stage. Ss. 252 and 256, Cr. P. Code, are not intended to prohibit such admission. Every Court has an inherent power to allow evidence to

produced in support of the prosecution" refers only to such witnesses as the complainant may bring with him and who have not been summoned by the Court. If on the day when the accused appears in answer to the summons, the complainant has no witnesses present with him, there is no evidence produced in support of the prosecution, and sub-s (2) of S. 252 then comes into play. What this sub-section authorizes is what is done in every complaint case under another name: the filing of a list of witnesses whom the complainant desires shall be summoned. If the list is filed and summonses are issued in respect of the persons named therein, the first stage contemplated in S. 252(1) passes, and the hearing of any unsummoned witnesses thereafter is a matter within the Court's discretion. (*Grille, J.*) RAHAT ALI v MUHAMMAD MURAD 10 B.N. 181=172 I.C. 113=39 Cr. L.J. 62=A.I.R. 1938 Nag 103.

—S. 252 (2)—Summoning of witnesses—Discretion of Magistrate.

A Magistrate is bound to summon under S. 252 (2) at the expense of Government such of the complainant's witnesses as he considers necessary. Mere fact that the

examination of some witness and framing of charge against rest—Reasons for discharge not given then and there—Legality—Power of Magistrate to defer giving

Magistrate has stage when he is groundless, recorded by him, that in the in- b to be proceeded against some of the accused persons and that it is not necessary to examine the other witness so far as they are concerned, it is perfectly competent to him to discharge those accused and to frame a charge against the rest of the accused alone. If he does not give reasons for such discharge then and there, intendi

—S. 252 (1)—Omission to examine complainant—If vitates trial.

If the Court neglects to examine the complainant on the day when the accused appears in answer to the summons, it no doubt fails to comply with the provisions of S. 252 (1), Cr. P. Code, but that would not

CR. P. CODE (1898), S. 256.

give them at the time of making the final order in the case in respect of the other accused, he does not act illegally in withholding his reasons and postponing them until the final order in the case. There is nothing in the language of S. 253 which precludes him from doing so. He does not become *functus officio* on pronouncing the order of discharge, he would become so only when he pronounces the final order in the case. Assuming that it is obligatory on the Magistrate to give his reasons before pronouncing the order of discharge, the omission to do so is only an irregularity curable under S. 537, Cr. P. Code, particularly when there is no suggestion that the failure of justice has been occasioned.

Kataramana Rao, J.) GOVINDARAJ

1938 M.W.N. 38=47 L.W. 12

10 B.M. 583=30 C.L.J. 100

A.I.B. 1938 Mad. 396=(1938) 1 I

—Ss 256 and 540—Right to produce
set after recording of plea of accused—Prope

The wording of S. 256 Cr. P. Code, and the prosecution the right to require after the accused has been recorded, that witness

under S. 540, if the required circumstances exist.
(*Weston, J.C.S.*) BAL CHAND V. SUKH DEO.

1938 A.M.L.J. 78.

—S. 257—Issue of process—If obligatory, when

—S. 257—Process issued to def.
Duty of Magistrate to secure his attende

When once a Magistrate issues process witness, he is bound to follow up that defence so desires, and to take all possible steps to secure the attendance of that witness. The Magistrate to follow this procedure at order whatever on the petition filed before him, re summoning the witness, sits at the proceedings. (*Patterson, J.*) RAMDAS GIRDHARI MONDAL.

—Ss 257 (2) and 544—Summoning of witness—Order as to deposit for expenses—Powers of Magistrate.

The Cr. P. Code gives a Magistrate a discretion to pass an order under S. 544 and rules subject to S. 544 and rules accused in a case under S. 257 (2) directing the deposit of the reasonable expenses of the witnesses as being summoned. (*Genn.*) EMPEROR V. MAHTAB S.

—S. 259—Illegal or
Proper procedure. See C

—Ss 260 and 263 (h)—Recording reasons—Form and substance—Object of safeguard.

In cases of summary trial, it is desirable that the magistrate should set out so much of the reasons that

CR. P. CODE (1898), W. 282.

have influenced him as to satisfy the accused that his mind has been applied to the ingredients necessary in law for the conviction of the accused. Though the reasons have to be recorded with brevity, the brevity should not be such as to tend to obscurity. These safeguards are essential, so that the High Court can have before it in case of revision, sufficient materials on record to satisfy itself as to the correctness or otherwise of the order. (*Thomas, C.J.*) BAIJOO V. EMPEROR.

1938 O.L.B. 512=1938 A.W.R. (O.C.) 123=

1938 O.W.N. 1180=1938 O.A. 916.

174 L.O. 685=10 R.S. 259=39 Cr.L.J. 474=
A.I.B. 1938 Sind. 70.

—S. 269 (3)—Applicability—Joint trial of several persons, some charged with murder and some charged

English—If incompetent to act as Court as Hindi—Trial, evidence and arguments in Hindi—Evidence taken down in English—Some documents in English—Effect—Trial—If had.

When the language of the Court is English

in an assessor trial did not know English, but knew only Hindi, would not therefore render the proceedings or trial illegal. There is no similar provision corresponding to S. 282 (which applies to the case of jurors) in the case of assessors, but assuming that the principle of

CR. P. CODE (1898), § 281.

CR. P. CODE (1898), § 297.

—§ 285-A—Construction—'And is so tried'—
Meaning of.

The words 'and is so tried' in § 285-A, Cr. P. Code,

§ 411—Interval between commission of offence and
finding of property with accused—Duty of Judge to
direct jury to consider interval—Presumption under
S. 114 III (a) Evidence Act—When not to be considered

mined in criminal Court—Duty of House Proctor—
Judge if can only advise or also direct.

Where a witness had been examined as a witness in

AIR 1938 Pat 579.

—Ss 297 and 298—Duty of Judge—Omission of

CR. P. CODE (1898), S. 297.

separate finding regarding each accused and that the particulars of the evidence affecting each accused should be placed in a manner which may enable the jury to distinguish the cases of accused as against whom the evidence is not of the same degree of cogency. Where the

A I R 1938 Pat. 579.

—Ss. 297 and 298—Duty of Judge—Statement to police—Omission of names of accused in—Effect of—Judge's duty in charging jury—Judge merely citing observations from old decision—Prohibited of

The giving of advice to the jury statements to the police as of one let should be deprecated. If it is the police-officer's notes in any partic

stood what is really meant by the answers elicited from

omissions and they must be invited to apply it. The Judge's duty is not properly discharged by merely citing

—S. 297—Misdirection—Charges of dacoity and of conspiracy to commit dacoity against several accused—Omission by Judge to deal with evidence against each accused on charge of dacoity.

In a case where there is a general charge of conspiracy against a number of accused to commit dacoity and, at the same time, a charge against the accused for having committed a dacoity it is most necessary that the Judge in summing up to the jury should distinguish between what is evidence against each of the accused on the charge of conspiracy and what is evidence against the accused on the charge of having committed a dacoity. That is more than ever necessary main evidence against the accused or

CR. P. CODE (1898), S. 298.

stolen property, the Sessions Judge in his charge to the jury referred to the evidence and also to the fact that the witness was in all probability a receiver of stolen property. It was held that the failure to point out with sufficient force, the unsafety of relying on such evidence, was not fatal to the conviction. (Hornwall, J.)

1938 M.W.N. 96=
175 I.C. 416=10 R.M. 774=
80=A.I.R. 1938 Mad. 464=
(1938) 1 M.L.J. 231.

—S. 297—Misdirection—Non-reference to minor matters.

Where the entire evidence is summarized before the jury

297—Misdirection—Sexual offences—Evidence—Prosecution—Omission to give jury special caution

The fact that the Judge's charge to the jury did not

before the Magistrate, the best course for the Sessions Judge is to draw the attention of the jury to those

the opinion of the judge, it would be before the jury and those omissions are not the testimony of the judge. General observations

tions devoid of facts are likely at some occasions to create an impression in the mind of the jury that every omission in every case is of no consequence whatsoever. (Noor and Varma, JJ.)

178 I.C. 334=5 B.R. 88=1938 P.W.N. 698=
A.I.R. 1938 Pat. 575.

—S. 298—Duty of Judge under—Absence of evidence to go before jury—Duty to direct verdict of not guilty.

Under S. 298, Cr. P. Code, it is the duty of the Judge arising in the course of the trial is a preliminary question, whether there is any evidence properly find the question

CR. P. CODE (1898), S. 298

duty of a Judge to make out a case for the which he thinks that a verdict of not guilty

CR. P. CODE (1898), S. 326.

reference to High Court of only part tried by

an absolute rule that in the aid of assessors and to the High Court under

V. EMPEROR.

1 L R (1938) 1 Cal 636 = A I R. 1938 Cal. 658.

—S. 307—Duty of the High Court—Disagreement with the unanimous verdict of the jury—Exercise of powers—Considerations.

In disagreeing with the unanimous verdict of the jury, the High Court has to consider whether the jurors were entirely unreasonable in the conclusion arrived at by them or whether it was impossible for the jurors to say that the guilt of the accused had been proved. The High Court does not exercise the power vested under S. 307, Cr. P. Code, in setting aside the verdict of the jury, unless it is perverse or patently

11 ARIA DHOBI. 172 I O 780 = 4 B R 165 = 39 Cr L J. 156 = 10 B P 346 = 1937 P W N 857 = 111 Pat L T. 857 = A I R. 1937 Pat. 662.

—S. 307 (3)—Duty of High Court.

—S. 309 (2)—Contents of Judgment.

In a trial with assessors it is the duty of the presiding Judge to ascertain the opinion of the assessors after summing up the evidence to them if he thinks it necessary.

Judge's
Code,
Judge's
Judge

66 C L J. 351 = A I R. 1938 Cal 295.

—S. 307—Interference with verdict of jury—Powers—Scope and extent of.

In cases where there has been a verdict of not guilty, it is the practice not to reverse the verdict unless it is perverse or manifestly wrong. On the other hand, where the jury has returned a verdict of guilty, the matter stands in a different footing. Having regard to the

merely states that he agrees with the opinion of the assessors (*Derbyshire, C. J. and Panchridge, J.*)
NIRMAL KUMAR BHOUMIK v EMPEROR

177 I N 29 = 11 B C 209 = 39 Cr L J 835 = 42 C W N 896 = A I R. 1938 Cal 551

—Ss 326 and 327—Scope—Requisite number of assessors not present—Trial with assessor included in list but not summoned—Legality.

of assessors was not present who was present in or to make up the number included in the list of not summoned for any

is illegal. (Necessity for regarding choosing of id Noor J.) (*Mohammad ROR v. RAMSIDDH RAI*)
L J 725 = 10 B P. 79 = A I R. 1938 Pat 352.

1 L R (1920) All 403 = 1 L J 150 =

1938 A W B (H C) 217 = 1938 A Cr C 20 = 10 E A 645 = 39 Cr L J. 559 = 1938 A L R 381 = A I R. 1938 All 227

—S. 307—Powers of reference under—Case triable with aid of assessors—Judge agreeing with verdict of jury—Reference—Competency

A Sessions Judge has no power under S. 307, Cr. P. Code, to refer to the High Court a case in respect of offences triable with the aid of assessors, nor has he any

—Ss 326 and 327—Scope—Requisite number of assessors summoned not present in Court—Judge summoning person present in Court—Latter's name on list of persons qualified—Choosing of latter and those previously summoned and present as assessors—If illegal or improper.

S. 326 of the Cr. P. Code is not mandatory, it only lays down the procedure 'ordinarily' to be followed. S. 327 gives the Court an emergency power to cause jurors or assessors to be summoned when such direction

—S. 307—Scope—Case tried by Assistant Judge partly by jury and partly with assessors—Latter

persons previously summoned and the fourth gentleman summoned on the date of the trial.

CR. P. CODE (1898), S. 350.

Where a Magistrate had recorded the evidence and the second Magistrate merely recorded the claim for a *de novo* trial and where having done so, the

Right of accused to de novo inquiry before charge.

An accused is not entitled under S. 350 (1) (a) to a *de novo* trial if the Magistrate has recorded the evidence and the second Magistrate merely recorded the claim for a *de novo* trial and where having done so, the

he does not feel it necessary to examine afresh, it is not incumbent on him to do so.

who heard the case—New magistrate not doing—Re-transfer of the former magistrate—demand *de novo* trial—Object of S. 350.

Where a magistrate after examining the witnesses and recording the statement of the and framing a charge, is transferred and the case is transferred to another magistrate for trial, but before any proceedings are taken in his Court, the former magistrate is reposed to the original place and the case is retransferred to his file, the accused have no right under the

CR. P. CODE (1898), S. 350.

de novo trial (including inquiry). In such a case failure to examine the witnesses in chief vitiates the trial. In such a case, the accused is entitled to a *de novo* trial.

A.I.E. 1938 Nag 493.
S. 350 (1) (a)—Contravention of—When vitiate

Contravention of the provisions of S. 350 (1) (a) will vitiate the trial only when there is a refusal on the

S. 350 (1) (a)—*De novo* trial—Prosecution not relying and not wishing to produce witness, examined before—Accused, if can insist on their production.

S. 350 (1) (a) does not require that even a witness on whom the prosecution does not rely and whom it does

RAM

1938 O.A. 858—A.I.E. 1938 Oudh 247.

S. 350 (1), Prov (a)—Scope and applicability of—Decision of second magistrate to re-summon witnesses—Accused if can insist that there shall be no *de novo*

50 (1), Cr. P. Code, has no effect if the new magistrate decides to recommence the inquiry and gives the accused a right at

the Magistrate has decided to have another trial of Magistrate—Demand for re-summoning and re-hear

CR. P. CODE (1998), S. 350.

ing of prosecution witnesses—Refusal—All witnesses recalled and cross-examined " " " " " "

Where after the prosec examined and a charge fram up the case, his refusal to a accused for a summoning an is not an irregularity which violates the trial. And when all the witnesses are recalled and further cross examined before the Magistrate who decides this case, th cannot be said to be prejudiced by the refu summon and re-hear the witneses, and the cannot be set aside on that ground. (Lakshn .

—B 350, Proviso (b)—Scope—*Magistrate after recording of prosecution framing of charge—Subsequent re-transfer*

the case. The refusal to re summon and re hear the witnesses examined by the same " " only an irregularity which does not dings in view of proviso (d) to S 35 the High Court or a superior Court unless the accused has been m thereby. Where a Magistrate afi

OR. P. CODE (1898). S. 369.

to the evidence and to form its own conclusion and to

—Ss 367 and 424—*Appellate judgment—Contents*

Supplies distributed under D. 275. Off CR. P. CODE,
SS. 349 AND 367. 1938 O W N 1051

—S. 367—Magistrate exculpating accused—
Remarks to prejudice of accused—If justified.

Witness
Irregular
EMPE

about his statement in cross case, recorded—Stater
cross-case not brought on record—Procedure, 1/ 2
—If curable under S. 537

Where a witness's answer as to whether he
statement in a cross-case is alone recorded, but
of the statement in the cross-case is not brought on
record, the procedure adopted is improper and irregular
being in contravention of S 353, Cr III Code. Where it
cannot be said to have caused any prejudice to the
can be cured by the application

TAQI MOHAMMAD v. MOHAMMAD
178 IC 1
1938 W N.
1938 AWR (CC)

—S 356—Non compliance with—Record, if can be used as basis for prosecution for perjury. See PENAL CODE. § 193. 1938 A.M.L.J. 17.

—§ 366 (3)—*Signing of judgment—its delivery*

As soon as a Magistrate signs his jud

—S 367—Remarks against person not accused or witness—Profruity.

Though a Magistrate may have to consider facts in

—Ss 369 and 250—Order of discharge under S 259—If a judgment—S. 369 if applies to judgments whether legal or illegal—Wrong order under S. 40.
Proper remedy.

CR. P. CODE (1898), S. 369.

CR. P. CODE (1898), S. 403.

illegal, where an order under S.

of High Court

The High Court has no inhere
review a judgment in a criminal c

Code, will therefore not confer such a power on the Government, if can subsequently restore sentence.

ment or fine under S. 393 (1), but he has no
take a bond under S. 562 from the accused.

J.) THE KING v BA KYWAY.

176 I.O. 224-39 Or L.J. 707 (1)-11 R.

A.I.R. 1938 Rang 218

S. 397—Applicability—Consecutive sentences of
detention under *Matras Schools Act*—Legality.

S. 397 of the Cr. P. Code does not apply to sentences

(1938) M.W.N. 352—A.I.R. 1938 Mad 613.

S. 401—Order of remission—Effect.

rights of the
His Majesty
as they are

the order of remission, any

whole it is clear, that the
is to confer a 'power' to
2. (*Stone, C. J., Ormer and*
ESHWANT DESHPANDE v.
1938 N.L.J. 423—
A.I.R. 1938 Nag 513 (F.B.).

S. 403—Defamatory allegations against minor
daughter affecting father—Acquittal of accused on
Complaint by daughter—If barred,
made to police by certain persons
maintaining defamatory allegations
minor daughter, both the father
file separate complaints, and the
equent acquittal of accused in father's
no bar to the complaint by the
daughter, because the complaint by the father although
on same facts could not either have been filed on behalf
without the
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d trial for

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13, Cr. P.
alter to be
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ch he has
be tried

conspiracy.
(*Castello, Jack and M. C. Ghose, J.J.*) PURNANANDA
DAS GUPTA v. EMPEROR. 68 C.L.J. 206.

S. 403—Principle of section—Extension—Prin-

S. 403, Cr. P. Code, requires that the Court of the
first instance should have been competent to try the
charge put forward at the second trial. The principles
underlying the English Common Law pleas of *autrefois*

(*Stone, C. J., Ormer and Dore, J.J.*) *ESHWANT DESHPANDE v. EMPEROR.*

1938 N.L.J. 423—A.I.R. 1938 Nag. 513 (F.B.).

S. 401—Scope of power of Local Government.

Per *Boss, J.*—Executive Government has not got unfet-
tered and unqualified freedom of action in the matter of
suspension and remission of sentence. Its powers in this
respect are in a sense derived from a statutory delegation
of the Royal Prerogative of pardon; not co extensive with

CE. P. CODE (1898), S. 403.

conflict and outrefois acquit have been embodied so far as this country is concerned within the limits, however narrow they may be or have been stated to be, of the language of the Statute itself. It would be bewildering and, indeed, might result in great injustice to the community at large if Courts were to endeavour to stretch the language or extend the principles laid down in S. 403. (*Costello, Jack and M. C. Ghose, JJs.*) PURNANANDA DAS GUPTA v. EMPEROR.

C L J. 206.

—S. 403—*Trial and conviction under S. 45 of Calcutta Police Act—Subsequent trial on same facts under S. 44 of that Act—If barred*

The trial and conviction of an accused with certain others under S. 45 of the Cr. P. Code does not bar his subsequent trial on under S. 44 of that Act. The case really the second clause of S. 403, Cr. P. Code (*M. C. Ghose, J.*) KALI CHARAN v. S. K. BRAHMACHARI.

42 C.W.N. 1232

—S. 403 (1)—*Applicability—Trial and acquittal under Ss. 379 and 411, I. P. Code—Subsequent trial on charge under sandalwood transit rules under Forest Act—If barred.*

In order that S. 403 (1), Cr. P. Code, may be successfully pleaded, S. 236, Cr. P. Code, must apply, and for

no or
al of
Code,
the
Hence
under the latter Act is established on the facts, and when the only doubt is whether an offence under the Penal Code is established. The fact that at the previous trial the accused might have been tried for both the offences under the Forest Act and under Ss. 379 and 411, I. P. Code, does not bar a subsequent trial under the latter Act.

—S. 403 (1)—*Applicability—Two charges triable jointly but not falling under Ss. 236 and*

—S. 403 (1) second part—*Applicability—Test.*

In deciding whether a subsequent trial comes under S. 403 (1), Cr. P. Code, the Court must consider whether the accused has been tried for the same offence.

—*Acquittal under S. 211, I. P. Code—Subsequent trial under S. 182, I. P. Code—If barred.*

Under S. 403 (1), Cr. P. Code, the "competency" of the Court to try an offence means not only the status or character of the former Court to try the offence, but also the fact that the accused is subsequently charged but is within its purview cases in which it is though otherwise qualified to try the case. It has been held that a Court which has not exercised its jurisdiction had not been fulfilled. Consequently the acquittal of the accused under S. 211,

CE. P. CODE (1898), S. 417.

I. P. Code, at a previous trial does not bar his subsequent trial on the same facts under S. 182, I. P. Code, if at the time of the previous trial there was no complaint in writing of the public servant concerned as required by S. 195, Cr. P. Code. (*Young, C. J. and Tek Chand, J.*) EMPEROR v. RAM RAHHA.

177 I.C. 894 = 39 Cr. L.J. 960 =

40 P.L.R. 501 = A.L.R. 1938 Lab. 625.

—S. 403, III. (c)—*Accused tried by 2nd class magistrate under S. 323, I. P. Code and acquitted by him—Power of District Magistrate on revision to order his retrial under S. 324, I. P. Code.*

not been charged under that section, he ordered that he should be tried under it.

Held, that the case was fully covered by III. (c) to S. 403, Cr. P. Code, and that the additional District Magistrate had no power to order that X should be retried under S. 324, I. P. Code, as that charge could have been framed by the second class Magistrate. (*Addison, J.*) BHAG SINGH v. EMPEROR.

I.L.R. (1938) Lab. 127 = 177 I.C. 339 =

11 B.L. 298 = 39 Cr. L.J. 870 = 40 P.L.R. 1036 =

A.L.R. 1938 Lab. 614.

—S. 413—*Costs of court fee awarded under S. 546 A—If form part of fine.*

The amount awarded as costs of the court-fees under S. 546 A, Cr. P. Code, ought not to be regarded as forming part of the fine for purposes of appeal. (*Pater- son, J.*) ATUL CHANDRA NODAK v. EMPEROR.

42 C.W.N. 760.

—S. 417—*Acquittal—Interference by High Court—Failure to draw correct and clear inference from proved facts—If ground of interference.*

In a case in which the result depends upon the appre-

Where there is a reasonable doubt as to the guilt of the accused, the High Court will not interfere with an

upon evidence the lower appellate Court might have come to the conclusion that the accused was guilty, unless it is quite clear that the Judge or Magistrate whose judgment of acquittal is appealed against is

conviction. It is not a power lightly to be used and should be used only where there is no reasonable doubt upon the record as to the guilt of the accused.

GB. P. CODE (1898), S. 421.

SONU KURMI v. EMPEROR.

177 I.C. 697=

B.R. 12-11 E.P. 176=

S. 421—Duty of Court—Summary appeal for default—Legality.

A Court cannot dismiss an appeal *sui* because the accused fails to prosecute his law requires that the dismissal of the

and Lobo, J.)

177 I.C. 316=39 Cr L.J. 890=11 E.S. 58=

A.I.R. 1938 Sind 171.

S. 421—Summary dismissal of appeal—Order not showing that records were examined or evidence appreciated—Legality—Interference in revision.

Where it does not appear from the order of the Sessions Judge dismissing an appeal summarily, that he examined the record of the case or that he tested the arguments on questions of fact by examination of the evidence actually given by the witnesses, the High Court will in revision set aside such order of dismissal.

James and Mada.

ROR

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S. 421—Summary dismissal after sending for record—Legality—Calling for record—Points argued—

When the same dismisses the appeal summarily, the Judge does not commit any illegality. But in all cases where a busy Sessions Judge sends for the record in a criminal appeal which is presented to him for admission, it is desirable that he should note in the order sheet the points for which he is sending for the record in order to satisfy himself as to the correctness of the submission made by the appellants before him. It will be difficult, in many cases, if not in all, for a busy Sessions Judge to remember the submissions which were advanced by the appellants' advocate which had satisfied him to this extent that he was forced to send for the record.

(Manohar Lal, J.) BASDEO KOJRI v. EMPEROR
172 I.C. 911=4 B.R. 204=1938 P.W.N. 113=
39 Cr L.J. 254=10 E.P. 369=
A.I.R. 1938 Pat 12

S. 423—Alteration of S. 323, I. P. Code, and Legality—Power of appellate Ss. 236, 237 and 423

1938 O.W.N. 740

S. 423—Appeal against conviction—Duty of

GB. P. CODE (1898), S. 423.

hears and sees the witnesses and in many cases his

conclusion but that the accused was guilty of the offence charged against him. (Roberts, C. J. and Sharpe, J.)
NGA KYAW HLA v. EMPEROR.

173 I.C. 91=39 Cr L.J. 248=10 R.R. 306=

A.I.R. 1938 Rang 45.

S. 423—Retrial—Failure of prosecution—Duty of Court

When the prosecution has proceeded against the accused under a particular section of the Penal Code and eventually fails, a re-trial on another charge, even if the facts fall within any of cls (2) to (4) of S. 403, Cr. P. Code, should not be ordered except where there is a strong case for believing that the accused is guilty of the offence and when the

term of imprisonment in the inter-

PEROR.

M.L.J. 126.

S. 423(1) (b)—Applicability—Power to alter acquittal into conviction

When finding, maintaining the sentence under S. 423(1) (b) must be read as under S. 423(1) (b) of altering a Court of revision enhancing a turn upon chance. Cl (b) of S. 423(1) does not apply to cases of acquittal, partial or total, but to cases of conviction, and Cl (a) applies to cases of acquittal, and if the appellate powers of the Court are to be exercised to convert an acquittal into a conviction, then they should be exercised on an appeal against an acquittal under S. 423(1) (a) and not on an appeal against a conviction under S. 423(1) (b). (Davis, J.C. and Lobo, J.) JADO RAHIM v. EMPEROR.

178 I.C. 520=A.I.R. 1938 Sind 202.

S. 423(1) (b)—Conviction by magistrate under Ss. 363 and 498, I. P. Code—Sessions Judge on appeal finding accused guilty under S. 498 only—Power to pass sentence.

A Magistrate convicting the accused under Ss. 363 and 498, Penal Code, sentenced them under S. 363 to

what sentence was to be passed

Held, that the Sessions Judge had jurisdiction under

been a miscarriage of justice, the Appellate Court cannot allow the conviction to stand. The appellant is therefore to bring before the of the Appellate Court such matters as may give rise to a reasonable doubt of his guilt having regard to the circumstances of the case. It is true that

Case failing for want of sufficient evidence.

CR. P. CODE (1898), S. 423.

CR. P. CODE (1898), S. 436.

insufficient to support a conviction, a re trial cannot be ordered simply to give the prosecution another chance of producing further and better evidence. (*B. K. Mukherjee and Biswas, JJ.*) *TRIPURARI BHATTACHARJEE v EMPEROR*. 175 I.C. 514=10 R.O. 797=

39 Cr.L.J. 604=42 C.W.N. 812=

A.I.R. 1938 Cal 361.

—S. 423 (1)(b)—*Re-trial—Order for—Principles.*

Per *McNair, J.*—Where the evidence would not on any proper view of the case support a conviction it would be worse than useless to send back the case for a new trial (*McNair and Biswas, JJ.*) *GOLOKE BEHARY TAKAL v EMPEROR*.

—S.

accused must be given a fair trial. Where the Court is to alter conviction to one under S. Code

Where the trial Magistrate convicted under S. 353, I P. Code, for assaulting a case whom he thought to be a public servant, but the appellate Court finds that that person was actually but that

certify and
been cross-
aving been
being con-
victed prefers an appeal and wishes for this additional evidence to be brought before the Court, the appellate Court has jurisdiction under S. 428 to direct the Magistrate to send the accused for a new trial.

A.I.R. 1938 Cal. 781.

—Ss. 435 and 440—*Exercise of powers under S. 435—Discretion—Accused not surrendering to his bail bond—Right to be heard in revision.*

Where an accused after the confirmation of his conviction remained at large the High Court its discretionary tions immediately

—Ss. 435 and 439—*Refusal to issue process*

170 I.C. 670=11 R.E. 69=39 Cr.L.J. 761=

A.I.R. 1938 Rang. 231

—S. 423 (b) (2)—*Powers of appellate Court—Confirmation under S. 435*

declining to issue process to an accused, and the magistrate has not acted as he should under S 202, Cr P. Code, the High Court has jurisdiction to entertain a

—S. 423 (2)—*Trial by jury—Misdirection—What amounts to.*

Where a Judge sums up to the jury by stating the

In revision especially evidence, (*Harwell, J.*) *VENKATASUBBA PILLAI, In re.* 177 I.C. 957=48 L.W. 801=1938 M.W.N. 873= 39 Cr.L.J. 984=A.I.R. 1938 Mad. 879=

—S. 424—*Appellate judgment—Contents. See CR. P. CODE, Ss. 367 AND 424.* 173 I.C. 672=

A.I.R. 1937 Pesh. 88.

—S. 428—*Prosecution witnesses not cross-examined a trial—Jurisdiction of appellate Court to direct*—S. 436—*Discharge—Setting aside—Grounds—Misapprehension and misappreciation of evidence.*

It is both legal and proper for a Sessions Judge or a District Magistrate to set aside an order of discharge on the ground of misapprehension of evidence. It is

CR. P. CODE (1898), S 436.

strictly speaking, legal for a Sessions Judge or a District Magistrate to do so on the ground of misappre-

CR. P. CODE (1898), S 439.

the trial and discharge, and (4) that therefore the second trial and conviction were quite legal and within

tion of witnesses—Order for further inquiry by Sessions Judge—Trial Court ordering inquiry and report by Subordinate Magistrate—Latter summoning accused—Trial and discharge—Legality—S. 529—Applicability.

An order by a superior Court to an inferior Court to hold a further inquiry into a complaint which has been dismissed under S. 203, Cr. P. Code, may be called a technical means re-consideration. In some cases

inquiry under S 436 into the case of a person who has been improperly discharged is not bound to begin the inquiry afresh. Further inquiry does not mean merely an examination of witnesses, but a further consideration of the evidence. The inquiry re commences where it was let off at the time when the improper order of discharge

Mad. 742—(1938) 2 M L J. 222

some papers, and without examining witnesses or holding an inquiry under S. 202, Cr. P. Code, the Court to which the case is sent for further inquiry is competent to order an inquiry under S. 202. But the Magistrate who is asked to hold an inquiry and to report by a particular date has no jurisdiction to proceed to summon the accused and hold a trial. A complaint was referred to the police, and on receipt of the police report, the Sub Divisional Magistrate who had cognizance of it,

S 436—Revision against dismissal under S. 203—Issuing of summons without notice to accused—Propriety of.

Where in revision, against an order under S. 203, Cr. P. Code, the Sessions Judge without issuing any notice on the accused persons, directed the issue of summons on the accused persons straight away and ordered the case to be heard by another Magistrate

Held, that the form of the learned Judge's order was

left it to

enquiry

a sum-

me in the

summons

ig time over enquiry, he

(*Cumhiffe and Hender-*

GYANENDRA CHAKRA

501—39 Cr L J 292—

A I R 1938 Cal 22

to the accused and proceeded to by the case. He examined some witnesses, and on 29.6.1937 discharged the accused under S 253 (2). The Sub Divisional Magistrate before whom the matter came up on 2.7.1937, held that the discharge of the accused by Mr O was entirely without jurisdiction, and ignored it. He ordered summons to be issued against the accused, and after their appearance, made over the case to a second class Magistrate who convicted the accused on 2.9.1937. An appeal therefrom to the first class Magistrate was dismissed. It was contended in revision that the second trial and conviction were illegal as the order of discharge passed by Mr O was not set aside by a competent authority.

Held, that the Sub-Divisional Magistrate who was in charge of the complaint and to whom the case was sent by

S 439

Acquittal

Applicability.

Competency.

Discretion

Enhancement

Finding of fact

Interference.

Interlocutory orders

Jurisdiction

Pending proceedings

Powers of High Court

Quashing proceedings

Scope

S 439—Acquittal—Interference—Grounds—

CR. P. CODE (1898), S. 439.

—S. 439—*Acquittal—Revision against—Acquittal in appeal—Power of High Court to order rehearing of appeal.*

direct the rehearing of the appeal. (*Mosely, J.*) **MA THAUNG v. NANDIVA.** 1938 Rang L.R. 121 =

175 I.C. 547 = 10 R.R. 511 =

39 Cr.L.J. 623 = A.I.R. 1938 Rang. 193.

—S. 439—*Acquittal—Revision against—Erroneous view of law.*

Revision of an order of acquittal may be allowed when the order of acquittal is based on an erroneous view of the law. (*Bhude, J.*) **MT. HARBANS KAUR v. LAHARI RAM.** A.I.R. 1938 Lah 739.

—S. 439—*Acquittal—Revision against—Interference—Power of High Court.*

The High Court has power to interfere in revision with an appellate judgment of acquittal, and though that power should be sparingly exercised, it would be wrong to refuse to exercise it in cases where there has been a failure of justice by reason of the appellate court not having brought a judicial mind to bear upon the evidence. (*Bartley and Khundkar, J.J.*) **SATISH-CHANDRA DAS v. CHINTA HARAN SAHA.** 178 I.O. 58 = 39 Cr.L.J. 609 = 10 R.R. 511 = 67 C.L.J. 571 =

—S. 439—*Applicability—O*
declaring person to be tout under s. 36, Legal Practitioners' Act—Revision—Jurisdiction of High Court. See C. P. CODE, S. 115. 47 L.W. 578.

—S. 439—*Applicability—Order of District under s. 36, Legal Practitioners Act declaring to be tout—Revision—Jurisdiction of High Court.* C. P. CODE, S. 115. (1938) 2 M.L.J. 400.

—S. 439—*Applicability—Order under S 476 B by Civil Court—Revision to High Court—Procedure governing—C. P. Code, S. 115—Applicability.*

An application in revision from an order S. 476 B, Cr. P. Code, by a Civil Court to the Court should be heard and decided in accordance the provisions of S. 439, Cr. P. Code, and not S. 115, C. P. Code. The order in question is one made by a criminal Court or a Court exercising criminal power, and power to revise, such order arises under S. 439, Cr. P. Code, S. 115, C. P. Code, does not apply to such a case.

Broomfield, J. The common sense view is that proceedings relating to prosecutions for criminal offences alleged to have been committed in Court are proceedings of a criminal nature, whether the alleged offence

CR. P. CODE (1898), S. 439.

v. GURDITTA MAL. 174 I.C. 344 = 10 R. Pesh. 63 = 39 Cr.L.J. 445 = A.I.R. 1938 Pesh. 11

—S. 439—*Discretion under—Interference with—of appeal. See CR. P. 10 Pat.L.T. 28*

of sentence—Exercise of

ence should be sparingly

and sentences should be

enhanced only in cases where the failure to enhance the sentence would lead to a serious miscarriage of justice. The mere fact that the High Court, had it been trying the case, might have imposed capital sentence is not a sufficient reason for enhancement. (*Young, C. J. and Abdul Rashid, J.*) **UTTAM SINGH SOCHET SINGH v. EMPEROR.** I.L.R. 1938 Lah 347 = 174 I.C. 949 = 10 R.L. 644 = 39 Cr.L.J. 502 = A.I.R. 1938 Lah 280.

—S. 439—*Enhancement of sentence—Murder—Sentence of transportation for life—Application for enhancement—Test to be applied—Interference—Grounds.*

Where an application is made to the High Court for enhancement of a sentence of transportation on a conviction for murder, the proper test to be applied is whether the only sentence which could be passed on the evidence is a sentence of death. There are many cases where Sessions Judges are too lenient in the exercise of the discretion vested in them by law, but the High Court

of a neighbour and borrowed from the latter a bill-book with which he killed his wife in a most brutal manner. The sentence of transportation for life was awarded. The High Court, on appeal, enhanced the sentence to death. The Sessions Judge who awarded the lesser penalty of transportation for life.

Held, that the only possible sentence which a Court

—S. 439—*Enhancement of sentence—Power of High Court—Exercise of—Practice.*

The power to enhance sentences should be sparingly exercised by the High Court and sentences should be enhanced only in cases where the failure to enhance the sentence would lead to a serious miscarriage of justice. The mere fact that the High Court, had it been trying the case might have imposed the capital sentence, is not a sufficient reason for enhancement. (*Young, C. J. and Abdul Rashid, J.*) **UTTAM SINGH v. EMPEROR.**

Making of a complaint under S. 195 (1) (a) is not a judicial act but is the act of a public servant. No revision lies under S. 439 from the District Magistrate under S. 195 (5) drawal of such complaint as it is not pass Criminal Court. (*Almond, J.C.*) **BABA**

CR. P. CODE (1898), S. 439.

the (Robt) ...
 —S 439—Interference—Refusal to take further evidence—Proceedings under S. 145—Claimant admittedly not in possession—Refusal to allow further evidence—If ground for interference.

Cr. P. Code. (Pandurang Row, J.) RANGA RAO V. AGANNATHA RAO.
 177 I.C. 584=11 B.M.:
 47 L.W. 340=A

—S 439—Interlocutory Power of High Court

Divisional Magistrate transferring calendar cases from

Court. If it is a false and vexatious or the trial Court may, and should, take S. 250 Cr. P. Code, when it acquits the stream, J.) PARNESSHARI DAYAL V. G

—S 439—Powers of High Court—Alteration of finding.

TARAPADO BHASKARI V. EMPEROR.
 1938 A.W.R. (H.C.) 467=1938 A.Cr.C. 75=
 1938 A.L.J. 769

—S 439—Powers of High Court—Order of release on conviction under S. 411, I.P. Code—Power to alter conviction into one of release, See CR. P. CODE

—S 439—Quashing

It is not the practice of the High Court, nor would it be proper for it ordinarily to alter or quash a charge unless it is clear that the complaint does not disclose the offence in the charge. (Coldstream, J.) GUL MOHAMMAD V. EMPEROR
 39 F.L.R. 957.

—S 439—Quashing proceedings—Ground for—Groundless charge

No doubt the High Court ought ordinarily by way of quashing a charge, the necessary materials are available appears to be *prima facie* groundless, it duty to interfere, without subjecting a unnecessary harassment of a trial. (F

CR. P. CODE (1898), S. 443.

Rao, J.) RAMASWAMI MUDALIAR, In re.
 47 L.W. 136=1938 M.W.N. 217=
 (1938) 1 M.L.J. 810.

—S 439—Scope—Discretion—Withdrawal of prosecution under S. 494—Revision—Interference—Prosecution ordered by Civil Court—Withdrawal on the ground of case being weak and the ground of continuance of trial—Propriety.

1938 P.W.N. 709=19 Pat. L.T. 786.
 —S 439—Scope—Order under S. 145—Finding

—S 439 (1)—Powers of High Court—Reversal of finding and sentence and ordering retrial—Failure to

"Penal Code,"
 (is charged and convicted under S. 380, ough he had six prior convictions and e to charge him under S. 75, I. P. Court has powers under S. 439 (1) to and sentence and order retrial by a orke, J.) EMPEROR V. MAHADEO
 1938 O.W.N. 1062=1938 O.A. 805=
 178 I.C. 218=1938 A.Cr.C. 131=
 1938 A.W.R. (C.M.) 92(1)=1938 O.L.R. 472=
 A.I.R. 1938 Oudh 261.

—S 439 (4)—Applicability—Partial acquittal.

RAHIM V. EMPEROR
 178 I.C. 520=
 A.I.R. 1938 Sind 202.

—S 440—Right of audience—Accused not according to his bail bond. See CR. P. CODE. S. 435 AND 440.
 1933 A.W.R. (H.C.) 690=
 1938 A.L.J. 1022.

—S 443—Omission to record finding—If initiator

CR. P. CODE (1898), S. 443.

under the provisions of Ch. 33 and consequently has under S 446 (1) committed the case for trial to the Court of Session (*Afackney, J.*) M.L. BIASA v. THE KING.

174 I.C. 824 = 39 Cr L.J. 470 =

10 B.R. 433 = A.I.R. 1938 Rang 105.

—S. 443 (Ch. 33)—*Privilege under—If can be waived*

There is no reason why an accused led to continue to avail himself of a there is good reason to believe, him it will render infructuous, if not harmful. Ch. 33 is a special procedure of which certain individuals at their own request are permitted to avail themselves. There is no reason why an accused should not waive a provided his the trial of (*Davis, J.*)

C. and Havelivala, J.) WISE v. EMPEROR.

176 I.C. 705 = 11 B.S. 35 = 39 Cr L.J. 789 =

A.I.R. 1938 Sind 150.

—S. 446 (Ch. 33)—*Proceedings under Ch 33 taken—Duty to commit.*

Once a Magistrate has taken proceedings under Ch. 33 his powers are curtailed. He cannot for instance under S 213 (2) cancel the charge, and if he does not discharge the accused under S. 209 or S 253 he must, as S. 446 of the Code directs, commit the accused for trial. (*Davis, J.C. and Havelivala, J.*) WISE v. EMPEROR

176 I.C. 705 = 11 B.S. 35 = 39 Cr L.J. 789 = A.I.R. 1938 Sind 150.

—S. 484—*Evidence of civil surgeon—If of prosecution—Opportunity to accused to rebut—Prosecution, if entitled to rebut evidence produced by accused.*

The evidence of a Civil surgeon taken under S. 464 in order to decide whether an accused person is of unsound mind is not admissible in the trial of the accused.

CR. P. CODE (1898), S. 476.

grudge, there is nothing in the Code warranting the proposition that action under S. 476 is only to be taken before the close of the proceedings in which the perjury is alleged to have been committed, or in strict continuation of them, or within any particular time after their termination. Nor is there justification for the view that

N. v.

698 =

429

—Ss 476 and 476 B—*Complaint by Court—Omission to appeal against order making complaint—Conviction on such complaint confirmed on appeal—Revision—Objection to legality of complaint—Maintainability.*

A person who has not appealed against an order resulting in a complaint under S 476 Cr. P. Code, being filed against him is not entitled to question or challenge the legality of the complaint in revision after he has been convicted and such conviction has been affirmed in appeal. (*Varma and Rowland J.J.*) KUNJO CHAUDHARY v. EMPEROR

16 Pat 660 =

19 Pat L.T. 21 = 1938 P.W.N. 41 = 173 I.C. 742 =

4 B.R. 332 = 39 Cr L.J. 853 = 10 B.P. 443 =

A.I.R. 1938 Pat. 99.

—Ss. 476 and 195 (1) (c)—*Court, if convicted against person not a party to the proceedings before it.*

S. 476, Cr P. Code, does not inhibit the clauses of

(*Stone, C.J. and Clarke, J.*) ABDUL RAHMAN v. MIT FUSIA BAI.

1938 M.L.J. 348.

—S. 476—*Duty of Court—Opportunity to party against whom enquiry is directed to cross-examine witnesses.*

—If necessary.

A Court making a preliminary enquiry under S. 476, Cr. P. Code, need not issue notice to the accused. (*Sharma, J.*) NAZAR MOHAMMAD v. HARNAM SINGH.

I.L.R. (1938) Lah 188 = 40 F.L.R. 959 =

A.I.R. 1938 Lah 641.

—S. 476—*Preliminary enquiry—Prosecution for direct—*

Code is

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in the

—S. 476—*Prosecution for direct—Prosecution for direct—Prosecution for direct—*

476 read with S. 195

of fabricated evidence

THE KING

—S. 476—*Relevancy of application—Relevancy*

CR. P. CODE (1898), S. 476.

by making a false entry, before action can be taken against such person, there must be some satisfactory evidence that the entry was fabricated for the purpose of being used in the proceedings; but actual user of documents in the proceedings is not necessary. (*Amer Ali, J.*) **GOPALDAS v. JNANENDRA.**

A.I.R. 1938 Cal 677.

—**§ 476—Prosecution under S. 193, I. P. Code—Considerations.**

Where an application under **§ 476** read with **S. 195** is made to the High Court for taking person for having made contradictory case, the High Court should, after making proper investigation, and considering

plaint was made and the accused was committed to prison, cannot in revision against his conviction question validity of the complaint, if the accused failed to avail himself of the remedy and there to question its validity. **VITHOO v. EMPEROR.**

—**§§ 476 and 476 B—Refusal to make complaint—Appeal—Remand—Power of same Judge to make complaint.**

Where a Subordinate Judge has previously refused to make a complaint, it does not follow that he is debarred from later on making a complaint. **Further proceedings.**

—**§ 476—Scope—Defamatory statements in course of judicial proceedings—Complaint of defamation—Sanctions—Necessity.**

It cannot be said that where defamatory statements are made in an affidavit in the course of judicial proceedings a complaint of defamation cannot in any case be made without complaint of the Court. Where it is a matter of doubt whether the fact complained of constitutes one of the offences relating to the administration of justice as provided in **§ 193**, Penal Code, or one of its cognate sections, the complainant is not thereby debarred from placing his complaint under **S. 500** of the Code. The complaint of the Court not being necessary in such a case, the making of the complaint under **S. 500** does not amount to an evasion of law. (*Datta, J.C. and Lobo, J.*) **KALUNIA MOTIRAM v. MULCHAND KIMTRAI.** 176 I.C. 365 = 39 Cr.L.J. 736 = 11 E.S. 17 = A.I.R. 1938 Sind 129

—**§ 476 A—Application for making complaint dismissed in default by lower Court—Jurisdiction of superior Court to make complaint.**

The word 'rejection' in **S. 476 A**, includes rejection on the ground that it did not appear to prosecute the applicant; therefore, an application for making a complaint under **S. 476** was dismissed in default by the

CR. P. CODE (1898), S. 476.

superior Court has no jurisdiction to make a complaint. (*Coldstream, J.*) **JAHAN KHAN v. THE KING**

176 I.C. 116 = 39 Cr.L.J. 698 = 11 E.S. 164 =

40 P.L.R. 136 = A.I.R. 1938 Lah 429.

—**S. 476 A—Making of complaint—Power of Additional District Magistrate.** See **CR. P. CODE**, **SS. 195 (3) AND 476 A.** I.L.R. (1938) Lah. 188.

—**S. 476 B—Appeal—Forum—Rejection of application under S. 476 A by civil judge.**

An appeal against the rejection of an application under **S. 476 A** lies to the District Court and not to the District Court (All) for revision. The District Court has jurisdiction to make a complaint, yet by the District Court

Court with direction to lay complaint.

On hearing an appeal under **S. 476 B**, the District Court has the power to remand the case from the District Court for revision. It is to lay the complaint. (*Grille, A.C.J.*) **VITHOO v. EMPEROR.** 1938 N.L.J. 285 = A.I.R. 1938 Nag. 487.

—**§ 476 B—Scope—Application under S. 193**

—**Magistrate declining to prosecute of District Magistrate to direct**

of—Person who has

it is quite clear that a

tion for action being

of appeal under that

N DAS AGARWAL v.

A W R (H C) 747.

—**S. 476 B—Revision—Procedure—Order by**

Civil Court—Nature of—Application in revision—If one

under **S. 439** or under **§ 115, C. P. Code.** See **CR. P.**

CODE, S. 439 40 Bom L R 297 (F.B.).

—**§ 476 B—Scope—Application under S. 193**

—**Magistrate declining to prosecute of District Magistrate to direct**

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CR. P. CODE (1898), S. 480.

—S. 480—*Debt Conciliation Board—If a Court—Power to punish for contempt—Punjab Relief of Indebtedness Act, S. 16.*

A Debt Conciliation Board is a Court and its proceedings are judicial proceedings by virtue of S. 16 of the Punjab Relief of Indebtedness Act. The Board would, therefore, be acting within jurisdiction in passing an order of fine for contempt under S. 228, I. P. Code, and P. C.

child—Reasons depriving woman of her right, if affect child

of det
not prevent the child from asking and
(Dawn, J.C. and Lobo, J.) CHETIBAI
178 I.O. 863—11 B.S. 42—39
A.I.R.

—S. 488—*Jurisdiction—Claim by band for maintenance—Existence of Court awarding maintenance—If bars jurisdiction of Magistrate.*

The mere existence of a decree of a Civil Court awarding maintenance to a wife against her husband does not oust the jurisdiction of a Magistrate, in a proper case, to make an order under S. 488, Cr. P. Code, in favour of the wife on an application by her under the section although the existence of such a decree is relevant when the Magistrate is considering what order to make.

—S. 488—*Right to maintenance—Offer by husband to maintain wife.*

A husband lived away from his wife as he had

attempt on the part of the neighbours to bring about a compromise but it failed on account of the stubborn

and to maintain with him was as a defence maintenance. judicial separated her and instances, the order for maintenance was proper. (Mackney and Spargo, J.J.) DE CRUZ v DE CRUZ.
173 I. 212—39 Cr. L. J. 287—10 B. R. 322—
A.I.R. 1938 Rang. 25

—S. 488 (1) — *Construction — Application for maintenance for wife and child—Power of Court to award sum in excess of Rs. 100 for both—Total sum awarded to both—If to be limited to Rs. 100.*

Where a wife makes an application for maintenance for herself and her daughter, the Court has power to award maintenance exceeding that when a woman makes and for her child she can or for the maintenance of both construe S. 488 (1), Cr. P. Code. (Mackney and Spargo, J.J.) DE CRUZ v DE CRUZ.
(Leach, C.J. and Madhavan Nair, J.) BULTEK v.

CR. P. CODE (1898), S. 488.

BULTEK. I.L.R. 1938 Mad. 729=177 I.O. 331=39 Cr. L. J. 865=11 B. M. 306=1938 M.W.N. 424=47 L.W. 594=A.I.R. 1938 Mad. 7:1= (1938) 1 M.L.J. 821.

—S. 488 (3)—*Arrears—Power of Court to issue one warrant and impose cumulative sentence of imprisonment.*

The intention of the Legislature was to empower the

separate warrant in respect of each term of imprisonment.

In other words, where arrears accumulate, the Court can issue impose a cumulative sentence of imprisonment. C.J., Allsop, Rappas, Ganga

—S. 488 (3)—*Order for imprisonment—Person sentenced already adjudged insolvent—Protection order under S. 31 of the Provincial Insolvency Act obtained—If fails as against the order of imprisonment of a Criminal Court.*

An order passed by a Magistrate under S. 488 (3), Cr. P. Code, for the imprisonment of a person who fails to pay a maintenance allowance, is a sentence of imprisonment.

An order for the protection already obtained by person under S. 31 of the Provincial Insolvency Act protecting him from 'arrest or detention', cannot him from arrest in execution of a Criminal

Court process or detention under a sentence of imprisonment passed by a Criminal Court. The 'arrest or detention' must mean arrest or detention in pursuance of a Civil Court passed in execution of a Criminal Court. A person who is sentenced to default to imprisonment could not escape under a protection order passed by the

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—S.

Arrears of maintenance—Right to recover.

Prviso to sub S. (3), S. 488 means that a person in whose favour an order for maintenance has been made must, to enable her to recover arrears of maintenance, apply to the Court to recover such arrears within one year from the date the arrears became due. Such person cannot allow arrears to accumulate indefinitely and

Evidence of—Agreement to pay half the salary to wife as maintenance.

An agreement by the husband to pay half of his maintenance is not by itself sufficient to live apart. P. TEASDALE
= 66 C.L.J. 567 =
I.R. 1938 Cal. 623.

—S. 488 (4)—*Sufficient reason—If what amounts to.*

CR. P. CODE (1898), S. 488.

CR. P. CODE (1898), S. 491.

not sufficient reason for refusing maintenance to a wife. Living in adultery need not be in the house of the adulterer or paramour of the woman. The question to be considered is whether there has been continued adulterous conduct on the part of the wife shortly before or shortly after the application is made for Continued adulterous conduct is what "living in adultery." (*Pandurang Row*, *PILLAI v. AMIRTHANMAL*.)

1 L R (1938) Mad 1100-17
39 Cr L J 851-48 L W. 273-1938 M W N 829-
A I R. 1938 Mad 833-(1938) 2 M L J. 407.

—S. 488 (4) and (5)—*Relative scope.*

—*Effect on arrears.*

An order under S. 488 (4) Cr. P. Code suspends the maintenance of a wife by the husband from the date of the order and has no retrospective effect, therefore, affect the order (*Diswas J*).

1 L R (1938)

39 Cr L J 357-66 C L J 571-19 R M 673-
42 C W N 64-A I R 1938 Cal 144

—S. 488 (8)—"Residence"—*Meaning of—If permanent residence.*

Where there is something more than a flying visit, where a man leaves his house and resides for some time

manner from the manner in which she lived at the time the order of maintenance was passed does not necessarily constitute a change in her circumstances. Husband's keeping a mistress and getting children by her and contracting debts for litigation are not circumstances

ing proceedings taken in pursuance of a warrant issued without jurisdiction

Nasirabad is outside British India and therefore a

—S. 491—*Content of Court for withdrawal—Recording of reasons—If essential.*

Reasons for giving permission to withdraw a case are, no doubt, desirable but are not essential. The code makes no such requirement and

RAO PAKODE v. EMPEROR, 10 E. W. 167-
127 I C 130-39 Cr L J. 65-A I R 1938 Nag 78.

—S. 491—*Discretion of Public Prosecutor—Withdrawal of prosecution.*

S. 494, Cr. P. Code, entrusts to the Public Prosecutor discretion to withdraw from the prosecution

with his wife, it does not appear that the section should be so strictly construed as to deprive the woman, who often in these cases is helpless, of assistance from the Court which is most easily accessible to her. It is not, however, possible in such cases to fix any arbitrary period of time, say, for instance, two months at Agra, six weeks at Bombay, one month at Karachi as a minimum to constitute residence for the purposes of S. 488. Each case will have to be dealt with on its merits. It could

custom authorities that case was weak and that would be expensive—If sufficient grounds for withdrawal.

Where a Civil Court after a full inquiry into the merits has ordered a prosecution, and the order has not been appealed against, the order should not be set aside unless it would be allowing an undesirable prosecution to be set aside. The prosecuting authorities unless

CR. P. CODE (1898), S. 494.

CR. P. CODE (1898), S. 510.

very costly in the Government. The Government has got to face and does face the spending of considerable sums of money in maintaining justice. (*Gruer, J.*)
SATWARAO v. KANBARAO BHAGORAO.

174 I O 510 = 10 E N. 403 = 39 Cr L J 458 =

1938 N L J 12 = A I R. 1938 Nag 334.

— S. 494—Reasons for withdrawal—Duty of Court to record.

S. 494, Cr. P. Code, does not prescribe for the withdrawal of a prosecution should

no bar to the High Court entertaining the petition direct if there are peculiar circumstances in the case which take it out of the ordinary, as where the High Court had on a previous occasion made adverse remarks on the behaviour of the accused when the matter came before it during the pendency of the committal proceedings and the existence of those remarks is likely in

39 Cr L J 458 = 1938 N L J 12 =
A I R. 1938 Nag 334

— S 494—Scope and application—
between Ss. 337 and 494,
AND 494.

— S 495—Application
tion—Power of Circle Inspector to present.

It is clear from S 495, Cr. P. Code, that an officer of the Police not below a certain rank Government is to prescribe, is entitled to prosecute, and is therefore, by

Scope—If overrides inherent powers of
—Direction to produce accused in High
ny other Court as may be directed—Vail
to produce as directed—Forfeiture

The provisions of S. 499 are not exhaustive and do not override the inherent powers of the High Court in restrictions on the sing conditions on irregularity in the es shall be respon- person on bail in

the High Court and for his subsequent production in the Court of the District Magistrate of the District

EMPEROR.

39 Cr L J 65 = A I R. 1938 Nag 76.

— S 498—Appeal to Privy Council—Grant of bail
—Power of High Court.

application.
PAKODE v.

of the High Court. (*Ustad, J.*) ANANDU CHIRAO
KALAR v. EMPEROR A I R. 1938 Nag. 420.

— Ss. 500 and 514—Accused released under S. 500
—Power of Court to restrict his movements—Order
that accused should be kept in an Ashram—Surety, if
bound by terms of bond.

and this being so, the surety is not bound by the terms of his bond. (*v. EMPEROR.*)
1938 O A

— S. 498—Commitment on serious charge—Grant
of bail—Power of High Court.

Where after an exhaustive enquiry the accused has been committed by a competent Magistrate on grave and serious charges relating to n—
High Court should not light
(*Blacker, J.*) MOHI UD DIN I
PEROR. 40 F L R 716 =

— S 510—Chemical Examiner's report—Proof
of.

Where all that is on the record of a case is a little scrap of paper on which it is written in somebody's

— S. 498—Petition for
Sessions Judge having concurrent jurisdiction—Sessions

the production of a report by the Chemical Examiner

CR. P. CODE (1898), S. 512.

in place of the Chemical Examiner's own personal appearance in Court are special provisions of the Code and must be strictly adhered to. (*Blacker, J.*) PEARY LAL v. EMPEROR. 176 I.O. 225 (1) =

11 R.L. 167 (1) = 110 Cr.L.J. 714 = 40 P.L.R. 788 = A.I.R. 1938 Lah. 496.

—S 512—Scope—Evidence taken under—Admissibility—Conditions—Onus of proof.

on such date and so his bond was forfeited. It was found that the bond had not been executed as such by the accused as the bond was nowhere signed by him. Moreover, the order sheet also did not show that the accused had knowledge of the change of venue of the Court.

Held, that the bond could not be forfeited under such circumstances (*Birwas, J.*) INARAT MALLICK v. EMPEROR. 174 I.O. 823 = 39 Cr.L.J. 473 = 10 R.C. 728 =.

—S. 514—Liability of two sureties for total sum of. Payment of Rs 1,500 by each—L.

Where a bond is executed by several undertaking to be Rs. 2,000, an order requiring each of them to pay Rs. 1,500 on forfeiture of the bond is "than the total amount of the bond from them together" (*Gruer, J.*) PEROR 178 I.C. 207 =

A.I.P.

—S 514—Proceedings under—Bond by sureties for party—Death of party—Enquiry into breach of conditions—Plea that main case subjudice—Sustainability.

Where proceedings under S 514, Cr. P. Code, are started on the ground that a bond has been forfeited, it is no answer to such proceedings to plead that the proceedings in respect of which the bond was executed are still subjudice when the person for whom the executants of the bond are sureties is dead. The death of that party terminates the proceedings so far that party is concerned, and there is no obstacle to an enquiry whether that person had broken the conditions of the bond. (*Gruer, J.*) NANDEO v. EMPEROR 178 I.C. 207 = 1938 N.L.J. 79 = A.I.R. 1938 Nag. 52.

—S 514—Security to keep the of offence under S. 323, I. P. Code—

Where a person who has furnished the peace commits an offence under S 323, I. P. Code, his bond is liable to be forfeited, for the commission of an offence under S 323, I. P. Code, is a breach of the

Y. D. 1938—37

CR. P. CODE (1898), S. 520.

peace. (*Hamilton, J.*) ABDUS SATTAR v. EMPEROR. 176 I.C. 948 = 39 Cr.L.J. 831 = 11 R.O. 7 = 1938 A.Cr.C. 55 = 1938 O.W.N. 355 = 1938 O.A. 566 = 1938 O.W.N. 676 =

A.I.R. 1938 Oudh 195.

—S. 514 (1)—Compliance of—Proof of forfeiture of bond—Grounds of—Omission to record—If illegality.

S. 514, Cr. P. Code says that the Magistrate shall before calling bound by the grounds is, S. 537, Cr. P. at such grounds

prosecution—Witnesses not examined—Order regarding exhibits—Power of Court to pass.

Where the accused and the exhibits are sent up by the police to the Magistrate and he takes action under

—S 517—Acquittal of accused—Forfeiture of

confiscation appears for the

accused is acquitted by the Magistrate, an order forfeiting to Government property seized from his possession on the ground that it "has not been satisfactorily accounted for and is tainted with suspicion" is bad. (*Grille and Bose, J.J.*) SHALIGRAM v. EMPEROR.

10 R.N. 165 = 172 I.C. 213 = 39 Cr.L.J. 105 = A.I.R. 1938 Nag 52.

—S 517—Title doubtful—Proper order

When title is doubtful, the proper order under S. 517, Cr. P. Code, ordinarily should be an order for return to the person from whom the property was attached. (*Weston, J.*) GOPI v. EMPEROR. 1937 A.M.L.J. 141.

—S. 520—Court of appeal—Additional Sessions Judge

Where an Additional District Magistrate had passed an order of acquittal in appeal, would lie only to the Sessions Court, the latter the order of disposal. 1937 A.M.L.J. 141

—S. 520—Powers of Sessions Court.

S. 520, Cr. P. Code, gives the Sessions Court power to modify, alter or annul an order passed under S. 517

CR. P. CODE (1898), S. 522.

by a Subordinate Magistrate. (*Baguley, J.*) MAUND PO TU v. THE KING. 1938 Rang. L.R. 143=176 I.C. 451=11 R.R. 67=39 Cr.L.J. 763=A.I.R. 1938 Rang. 278

—S. 522—Accused entering possession of complainant's house by breaking lock—Order of restoration of possession—Power of Court to pass.

Where the accused persons broke open the lock of the house of the complainant in his absence and entered into possession thereof and when the complainant reached

CR. P. CODE (1898), S. 526.

face of the questions themselves, disallowed or allowed as the case may be, the only possible inference must be that they have been allowed or disallowed for some ulterior and improper reason. (*Braund, J.*) U SAW v. THE KING. A.I.R. 1938 Rang. 456.

—S. 526—Grounds for transfer—Apprehension—Explanation of magistrate—What should contain—Putting up with the complainant's friend—Reasonable apprehension.

... a magistrate in transfer, and an ex-re satisfactory, if 'away deny them, 'ments that 'what ace' and so on. i magistrate was-ed the complaint,

Lah 454, Diss. from. (*Skemp, J.*) RODA v. AUTAR SINGH. 40 P.L.R. 923=A.I.R. 1938 Lah. 839.

—S. 522—Order by appellate Court—Time limit. A Court of appeal can pass an order under S. 522,

and it is not denied, then the only question is whether or not the petitioner has reasonable apprehension of prejudice from such conduct. It was held that such conduct was undesirable and that the case should be transferred. (*Dhale, J.*) BINDESHWARI MISHRA v. 175 I.C. 49=4 R.R. 619(1)=71=39 Cr.L.J. 517=1938 P.W.N. 518=A.I.R. 1938 Pat. 378.

—Ground for transfer—Communal bias

—Reasonable apprehension.

little or no practical use, as a case will not usually reach the appellate Court before the expiry of the month. (*Gruer, J.*) NAMDEO v. EMPEROR I.L.R. 1938 Nag 454=173 I.C. 620=10 R.W. 314=39 Cr.L.J. 342=A.I.R.

—S. 522 (3)—Order under—Limit.

S. 522 (3), Cr. P. Code, imposes no restriction on a Court of appeal or revision. Such a Court can, therefore, pass an order restoring the property to the complainant even after the expiry of one month from the original conviction. (*Skemp, J.*) RODA v. AUTAR SINGH 40 P.L.R. 923=A.I.R. 1938 Lah. 839.

—S. 526—Application for transfer—Proof of necessity

A Magistrate is not barred from trying cases between members of two communities by reason of his belonging to one of them. But when a Magistrate finds himself is incumbent upon him to discretion in handling the as been guilty of errors of which has been against the

interests of the party belonging to the community to which he does not belong, it is impossible to escape the conclusion that that party has a reasonable apprehension that it is not likely to get an impartial trial. The case in such circumstances should be transferred from the file of the Magistrate, although there is actually no communal bias in his mind. (*Blacker, J.*) LAL SINGH 40 P.L.R. 508=177 I.C. 507=39 Cr.L.J. 888=11 R.L. 333(1)=A.I.R. 1938 Lah. 576.

and 528—Ground for transfer—Com-

IN v. EMPEROR, A.I.R. 1938 Rang. 264

—S. 526—District Magistrate, without notice

There is no provision in the Code of Criminal Procedure that a District Magistrate may not

Ordinarily, the mere fact that a case is between

everybody concerned to transfer the case.

AMBA PAKSHAD v. INAM ALI. 178 I.C. 507=A.I.R. 1938 Lah. 708

—Grounds for transfer—Hostility—Pre-

against Magis-

was trying a case in an application accused had present on the Magistrate, he might in which would

as a ground for THE KING, 1938 Rang. 456.

—Irregular pro-

CR. P. CODE (1898), S. 526.

CR. P. CODE (1898), S. 526.

—S 526—Grounds for transfer—Magistrate hearing case at untimely and inconvenient hours and refusing adjournment.

—S 526—Grounds for transfer—Trial by magistrate who had exercised powers under S 127 (1), Cr. P. Code—Trial of offence in respect of such disturbance.

Held, that the orders created a reasonable apprehension in the minds of the accused that they would not get a fair and impartial trial. Magistrate and hence for the transfer of trial.

LAL BAHADUR RAUT

4 B.R. 583—10 B.P. 581—39 Cr.L.J. 527—
A.I.R. 1938 Pat 238.

—S 526—Ground for transfer—Magistrate having interview with one of the parties.

The fact that the Magistrate had an interview with one of the parties to the case privately and out of Court and heard from that party his version of the facts, is sufficient to disqualify him from trying the case, and the case should, another Court. (Blackb.)
EMPEROR. 40 P.
10 B.L.

—S 526—Ground for transfer—Magistrate, tenant of father of accused.

The fact that the Magistrate lives in the bungalow which is owned by the father of one of the accused persons is no ground for transfer, when the landlord lives in another town and the Magistrate took the house on rent long before the institution of the case in his

display of unnecessary haste in trial of case.

Where the Magistrate has displayed haste in the trial of the case and has wrongfully give the accused opportunity to engage assistance as he thought proper, the con-

Sharpe, J.J.) MAUNG BA CHEIN v. EMPEROR.

A.I.R. 1938 Rang 454.

—S. 526—Magistrate issuing search warrant—If can try case, See PUBLIC GAMBLING ACT, S. 5.

171 I.C. 1007.

—Ss 526 and 528—Order of transfer—When operates—Trial and conviction subsequent to order of transfer—S 531—

on one Court it is passed after the order is passed—even though a copy of the order of transfer has not been received by it—acts without jurisdiction. But it does not follow that the order so passed without jurisdiction is void. S 531 of the Cr. P. Code would apply to the case and the trial and conviction of an accused cannot, in the absence of a miscarriage of justice, be set aside on the ground that the trial was held after the order was ordered to be transferred from

39 Cr.L.J. 576—10 B.R. 483—
A.I.R. 1938 Rang 198.

—S. 526—Grounds for transfer—Reasonable ap-

A.I.R. 1938 Rang. 442.

—S 526—Reasonable apprehension in mind of accused that he would not get fair trial—Transfer.

CR. P. CODE (1898), S. 526

there is no reason to doubt that the Magistrate will do his best to come to a correct conclusion if he continues the trial, as it is necessary not only that justice should be done but that it should appear that justice is being done. (*Mohamad Noor, J.*) LAL BAHADUR RAUT v. EMPEROR.

175 I.C. 110 = 4 B.R. 533 =

10 B.P. 581 = 39 Cr.L.J. 527 =

A.I.R. 1938 Pat. 238.

—S. 526—Refusal to permit questions being put to witness—If ground for transfer.

circumstances and may even mean the rejection of the version. The question in any case would be perfectly relevant and legitimate. However, the rejection of such question cannot be a ground for transfer. (*Mohamad Noor, J.*) LAL BAHADUR RAUT v. EMPEROR.

175 I.C. 110 = 4 B.R. 533 = 10 R.P. 581 =

39 Cr.L.J. 527 = A.I.R. 1938 Pat. 238.

—S. 526—Right to apply for transfer—Complainant in cognisable case.

The complainant in a cognisable case is, no doubt entitled to apply for transfer.

Rashid, J.) EMPEROR v. SHANA. 40 P.L.R. 468 = 177 I.C. 187 = 11 R.L. 274 = 39 Cr.L.J. 527 =

A.I.R. 1938

—S. 526—Transfer—Who can apply

—S. 526 (1)—Procedure—Ct. and 454, I. P. Code—Proper sent rate—Release on probation—If imprisonment—Necessity for.

treating the accused more leniently than in S. 562 (1). An accused convicted under I. P. Code, may in a proper case be released on probation. If he is convicted under 457, I. P. Code, a sentence of imprisonment is obligatory. Where, therefore, in case under Ss. 380 and 454, the Magistrate con-

CR. P. CODE (1898), S. 528.

BA SAKHORA.

40 Bom.L.R. 927 =

178 I.C. 330 = A.I.R. 1938 Bom. 463.

—S. 526 (8)—Adjournment granted on condition that applicant should within reasonable time apply to High Court—Application wrongly but in good faith made to local Court—If fatal.

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ie first time, be and Lobo, J.)

10 B.S. 258 =

1938 Hind 66.

—S. 526 (8)—Scope—Non-compliance—Refusal to accept application and to adjourn case—If ground for transfer.

Refusal to accept an application under S. 526 (8), Cr. P. Code, and to stay the case in obedience to the mandatory provisions of the section would justify an apprehension in the mind of the applicant that he would not receive a fair trial, and is a ground for transfer. The fact that the application is defective or not in proper form is no ground for declining to adjourn the case. (*Bose, J.*) JANKI PRASAD v. MSTR. SUKH

1938 N.L.J. 36.

—S. 526 (8) and (9)—Scope—If restrict powers of s to pass order for costs under S. 344. See CR. P. CODE, S. 344. 1937 A.W.R. 1226

Haga

elves. And as (Blacker, J.) 175 I.C. 515 = 1938 Lah. 337.

Cr. P. Code, a Magistrate. (*Lakshmana Rao, J.*) OR KURNOOL v. 48 L.W. 381 = A.I.R. 1938 Mad 909 = 1938 2 M.L.J. 531 (1).

CR. P. CODE (1898), S. 528.

—S. 528—Transfer under—Inquiry under S. 202, if can be ordered in such a case. See CR. P. CODE, S. 202—SCOPE. A.I.R. 1938 Nag 433.

—S. 529—Applicability—"Good faith"—Order by superior Court to inferior Court to make inquiry into complaint and to report by fixed date—Latter summoning accused and proceeding with trial—Discharge—Legality. See CR. P. CODE, S. 436 10 Pat L.T. 336.

—S. 529 (1)—Curability under—Conditions—Second officer transferring to himself case taken cognizance of by the S. D. O. during the latter's absence—Trial by Second Officer—Legality—Cr. P. Code, Ss. 13 (3) and 192.

Where there was a standing order when the S. D. O. is away from the Second Officer is to carry on the work at the headquarters and where in a Second Officer during an absence of the S. D. O. transferred to his own file, a case cognizance of by the S. D. O. and it himself, on a plea that there has been no transfer and as such the proceedings were *ultra v*.

Held, that the Second Officer must be considered to have been appointed as S. D. O. to

KRISHNA SINHA v. EMPEROR 42 C.W.N. 216 =

174 I.C. 513 = 39 Cr. L.J. 417 = 10 R.C. 693 = A.I.R. 1938 Cal 195

—S. 530—Scope—Demand for re-summoning and re-hearing witnesses under S. 350—Non-compliance—Trial—If vitiated. See CR. P. CODE, Ss. 350, PROVISOR (2) AND 530 (1938) 2 M.L.J. 41

—S. 531—Applicability—Order of commitment

An order of commitment within the meaning of S. 51 certainly made in the course of enquiry preliminary to the even if the committing Magistrate had no territorial jurisdiction at the time of the commitment and on that account had no jurisdiction to make the commitment, such want of jurisdiction would not be a good ground for setting aside the order of commitment, when it has not occasioned any failure of justice (Jack and Khundkar, JJ) EMPEROR v. SAYER UDDIN PRAMANIK

I.L.R. (1938) 2 Cal 357.

—S. 531—Applicability—Trial and conviction subsequent to order transferring case to another Court—If void or if cured by Section. See CR. P. CODE, Ss. 526 AND 528 1938 M.W.N. 830

—Ss. 535 and 161—Defects in recording confession—If can be condoned

Omissions and irregularities in recording confessions under S. 164 are condoned by S. 533 provided they do not prejudice the accused, (Almond, J.C. and Mir Ahmad, A.J.C.) KISHAN CHAND v. EMPEROR 174 I.C. 449 = 10 R. Pesh. 64 = 39 Cr. L.J. 418 = A.I.R. 1938 Pesh 5.

—S. 533—Evidence of Magistrate recording confession—When admissible

CR. P. CODE (1898), S. 537.

S. 533 clearly authorises the taking of the evidence of the Magistrate recording the confession, where there is any error in the form of the recording or not recording questions or in the form of the certificate, for it cannot be said that these are matters which injured the accused as to his defence on the merits. (Bennet and Verma, JJ.) LAL SINGH v. EMPEROR.

I.L.R. 1938 All 875 = 1938 A.W.R. (H.C.) 642 = 1938 A.L.J. 943 = 1938 A.C. 107 = 1938 A.L.R. 881 = A.I.R. 1938 All. 62.

—Ss. 536 and 418—Appeal—Case triable by assessors tried by jury—Appeal, if lies on facts.

Where an offence triable with assessors is tried with the accused and an question whether an

Held, Per McNair, J. (Birwar, J., contra).—So

1938 All. 642 = 1938 A.W.R. (H.C.) 642 = 1938 A.L.J. 943 = 1938 A.C. 107 = 1938 A.L.R. 881 = A.I.R. 1938 All. 62.

—S. 537—Admission of evidence—Admission of documents during cross-examination of prosecution witnesses—Curability See CR. P. CODE, Ss. 252, 256 AND 537. 1938 A.W.R. (H.C.) 638.

—S. 537—Applicability—Presentation of complaint under S. 22 of Cattle Trespass Act to wrong Court—If curable. See CATTLE TRESPASS ACT, Ss. 20 AND 122. 175 I.O. 663

—S. 537—Erroneous statement of charge—If curable.

There is a distinction between a misjoinder of charge and an erroneous statement of a charge otherwise law- error in charge can be cured under S. 537.

and Lobo, J.) EMPEROR v. BALUNAL 177 I.C. 346 = 39 Cr. L.J. 890 = 11 R.S. 38 = A.I.R. 1938 Sind 171.

—S. 537—Essentials of vitiation—Summons not giving all particulars required by S. 15 of U.P. Prevention of Adulteration Act—Cure of. See U.P. PREVENTION OF ADULTERATION ACT, S. 15 1938 A.L.J. 497.

—S. 537—Examination of complainant—Failure to make—If curable.

The omission to record the statement of a complainant could at best be considered to be an irregularity which cannot vitiate the trial. Such an irregularity can be cured under S. 537 of the Cr. P. Code. (Kichlu and Jank Nath Waur, JJ.) ABDUL AZIZ v. STATE 40 P.L.E. J. & K. 1.

—S. 537—Procedure in contravention of S. 353—If curable See CR. P. CODE, Ss. 353 AND 537. 1938 M.W.N. 1064.

—S. 537—Scope—Misjoinder of charges—If curable. It makes no difference whether the acts charged are forty-one, fourteen or four, provided they exceed the statutory number and are not covered by the provisions of S. 234, Cr. P. Code, or the following provision

CR. P. CODE (1898), §. 537.

relating to the joinder of charges; the misjoinder of charges is a vital defect in the trial which cannot be cured by the provisions of S. 537, Cr. P. Code. (*Davis, J.C. and Havelwala, J.*) CHUHMAL NIRMALDA v. EMPEROR. 177 I.C. 280-39 Or.L.J. 881=

—S. 537—Scope—Omission to comply with S. 342
—If cured. See CR. P. CODE, S. 342

A.I.E. 1938 Sind 97.
S. 537—Scope—Omission to give reasons for
discharge of some accused at time of discharge—Effect
—Irregularity—If cured. See CR. P. CODE, S. 253.

—S. 537—Scope of—Transfer *see* *supra* *note* 1
who had not himself taken cognizance
curable under S. 537.

S. 537 in its wording shows, deals with the responsibilities committed by Courts of competent jurisdiction. Where a Magistrate transfers a case which he has not himself tried, it is not a case which he has not tried, but a case which he has tried. /

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Alth

Act to apply the provisions of S. 537 to cases of want
of sanction required under S 195, Cr. P. Code. an
irregularity in a complaint made by one Court to another
is curable under Sub-S, (a), since a complaint made by
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487.

—S. 539-B—*Local inspection—Absence of memo-*

vitrated.

—§. 539-B—Scope—Local investigation—Limits to powers of Court—Charge of the jury—Offer by accused Court to test truth of advertise—If justified.

to make a local investigation, is
plate a procedure by which the judge or magistrate has
to all intents and purposes to put himself in the position
of a witness in the case. A magistrate is therefore per-
fectly justified in refusing to accept an offer made by the
accused, charged with the offence of cheating in respect
of an advertisement inserted by him, to make a demon-
stration of a physical feat in Court, in order to test

OR. P. CODE (1898), S. 562.

whether his advertisement was true or false. (*Fast Ali and Rowland, JJ.*) - AKHIL KISHORE RAM v. EMPEROR. 174 L.Q. 635=19 Pat L.T. 375=

4 H.R. 466 = 39 Cr.L.J. 442 = 10 E.P. 541 =
1938 P.W.N. 93 = A.I.R. 1938 Pat 185.
— S. 540 — Failure to examine accused subsequent
to examination of Court witnesses — Trial if vitiated.
See Cr. P. CODE, SS. 342 and 540.

1938 ■ W.N. 743.
—S. 540-A—Requirements of Non-compliance
with as regards one of several accused in a joint trial
—Effect

Normally a trial in the absence of the accused is a

joint trial of several accused, the presence of one alone
is dispensed with under S. 540-A, Cr. P. Code, without
fulfilled, the trial
rds that particu-
for a joint trial

for a joint trial
and indivisible.
OKHAR DAS v.
-10 H.L. 562-
1938 Lah. 218.
Punjab Govern-
ment v. Expenses

The only fair interpretation of R. 1, Chap. 9, Vol. 3 framed by the Punjab Government which makes no distinction between prosecution witnesses and defence witnesses is that Government by exercising its power of restriction, which it is authorized to exercise by S. 544, Cr. P. Code, has limited the cases in which Magistrates may pay the expenses of witnesses to those mentioned in the rule. If the rule framed by the High Court lays

under 5,458, I. F. Loae—Accused over 41 years.

With 14 years rigorous imprisonment, an order under S. 562, Cr. P. Code, cannot be made. (*Din Mohammad, J.*) **JAWAND SINGH v. JAGAT SINGH.**

40 P.L.R. 999.
—S. 562(1)—Applicability—Conditions—Accused
over 21 years—Offence punishable with more than seven
year's imprisonment—Release on probation—Legality.

CR. P. CODE (1898), S. 562.

A Magistrate has no power to act under S. 562 (1), Cr. P. Code, in the case of an offence punishable with more than seven years' imprisonment and where the accused is more than 21 years old. (*Broomfield and Norman, JJ.*) **EMPEROR v. YESHABA SAKHOB.**

S. 562 (1)

under S. 411, I. P. Code—Order of release after admonition—Legality—Remission—Power of High Court to alter conviction to one under S. 379, I. P. Code, and maintain order of release.

A person convicted under S. 562 (1) of the facts found are equally for session of stolen property, the can alter the conviction into Code, and maintain the order would then be perfectly legal. *(Alonson, J.)*

EMPEROR v. BHOLA MIA. 18 Pat. L. T. 872.

CRIMINAL RULES OF PRACTICE (MAD) R. 85—Scope and interpretation of.

The whole spirit of R. 85 of the Criminal Rules of Practice, is that a Magistrate should not only satisfy himself that the contemplated confession is voluntary, but should ascertain the exact circumstances in which it is made and the extent to which the accused had relations with the police. For such a purpose, a magistrate may ask such question as he thinks fit provided he re-

CRIMINAL TRIAL.

Jurisdiction.
Misjoinder.
Presumption of Innocence.
Procedure.
Proof of guilt.
Sentence.

Duty of Court to give reasons for conclusion.

An appellate Court, before dismissing an appeal summarily, ought to give indications that it has actually

There can be no forfeiture of penalty in a bail bond except to find been ties, ment

BHATTACHARJEE v. EMPEROR
4 B. R. 503 = 174 I. C. 984 = 10 B. P. 586 =
39 Cr. L. J. 523 = A. I. R. 1938 Pat. 211.

Benefit of doubt—Meaning of—Mistake as to weapons used by accused—Right to benefit of doubt.
1937 M. W. N. 1331.

Charge under groving knowledge—

up his mind upon
if there is any real
give the accused the
in guilty, even in
ect of which the
ting him of that
e burden lies on
the prosecution to prove the guilt of the accused. If in

CRIMINAL TRIAL.

Acquittal
Appeal.
Bail Bond
Benefit of doubt.
Case and counter case
Commitment to sessions
Confession.
Conviction
Cross cases.
Delay in prosecution.
Duty of Court
Duty of prosecution
Duty of Subordinate Magistrates
five officers
Evidence
First Information Report
Inherent powers of Court.

necessary guilty intention is or is not present, and when

CRIMINAL TRIAL.

CRIMINAL TRIAL.

Held, that there was a reasonable doubt as to intention of the accused and the offence fell more under S. 304, Part 2, than under S. 302 or 3 (Davis, J.C. and Lobo, A.J.C.) GHU 111

INAM BAKHSI v. EMPEROR.

174 I.O. 497—10 B.S. 254—39 Cr.L.J. 111—

A.I.R. 1938 Sind 63

—Case and counter case—Prosecution evidence in one treated as defence evidence in the other—Legality—Propriety—Consent of Counsel—If can cure defect.

Trials in criminal cases are governed by of Cr. P. Code and the procedure of prosecution evidence in one case as defence other and *vice versa* is not warranted by of that Code. The procedure permissible

for the
J.) S

39 Cr.L.J. 929—A.I.R. 1938 Oudh 249.

—Case and counter case—Statements of witnesses who are accused in the counter case—If evidence.

—Confession—Duty of Court to take as a whole—

a consideration, when of a confession or its presumptions which evidence on record, on course of natural evidence is in themselves an accused in JADO RABIR 938 Sind 202.

Court—Confession—Value of—statements from

confession, particularly, the Court

it is
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eviden

When the only witness who proves the confession his statements from time to time on material obviously with some purpose, he cannot be regarded as a reliable witness, and the confession cannot prove on the sole testimony of such a witness. Confession in such a case must be ruled out and

Parties should not be encouraged to resort to the Cr

mad, J.) BHAGWAN SWARUP v. CROWN.

40 P.L.R. 967.

—Committal to session—Offence of

—Confession—Retracted—Retracted confession should not form basis of conviction, unless substantially corroborated by independent evidence.

As a rule of prudence a retracted confession should

story as set forth in the confession is consistent, natural and plausible. (Dhale and Chatterjee, J.J.) EMPEROR v. MANU CHIK. 175 I.O. 716—4 B.R. 626—

39 Cr.L.J. 635—11 R.P. 11—A.I.R. 1938 Pat. 290.

—Confession—Voluntary nature of—Question of fact. See EVIDENCE ACT, S. 24—SCOPE OF.

1938 M.W.N. 24 (2).

—Conviction—Basis of—Homicide—Decision as to—Facts to be taken into consideration—Intention—Relevancy. See PENAL CODE, SS 304 (1) AND 302.

A.I.R. 1938 Rang. 166.

—Confession—If to be accepted in entirety.

There is no justification for the rule of law that in the absence of other evidence the whole of a given confession must be accepted as a statement of truth in its entirety. It is true that if an accused person makes a confession, the whole of that confession must be placed before the Court and is receivable in evidence. But

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whose evidence the prosecution and the Judge largely rely, and with whose evidence the evidence of other

CONFIRMATION—A testimony of increased witness corroborated by other evidence—Conviction—Sustaining.

—Cross-cases—Circular No. 52 of Judicial Commissioner's Court, N. W. F. Province—Interpretation.

By Circular No. 52 of the Court of the Judicial Commissioner, N.W.F. Province, it is intended that in cross-cases relating to same transaction the trial Judge should bring on each record separately the whole story complete by itself and should give findings on the issues "and act in that case independently from those which

But it is never intended that a part
1 be admitted in each case and the
it. (*Almond, J C. and Mr Almad,*
J.) **IBRAHIM v. EMPEROR,** 174 I O. 137=
39 Cr.L J. 401=10 R Pesh. 58=
A R. 1938 Pesh. 10.

—Cross-cases—Fight between two rival factions—Prosecution of one party ending in discharge—Subsequent prosecution of other party—Prosecution witnesses in later case mostly accused in former case—Conviction—Probitity.

Where rival parties fight over a feud with sticks and stones, and one of the parties is prosecuted, but discharged, it is unsafe to convict the other party on a prosecution commenced subsequently. Where the prosecution witnesses in the later case were mostly accused in the first case, their statements do not amount to evidence of persons who were the same offence in the same case. *Admittedly they have not been proved to be the same persons.* S. 119B, 119C, 119D, 119E, 119F, 119G, 119H, 119I, 119J, 119K, 119L, 119M, 119N, 119O, 119P, 119Q, 119R, 119S, 119T, 119U, 119V, 119W, 119X, 119Y, 119Z, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889,

Where a prosecution is launched against a public servant after a delay of nearly four years, it raises a question of law at the other end of the scale.

Court to put such question
If the Public Prosecutor fails to put a witness a question such as that of "cross-examine" necessary the

—Duty of Court—Justice to be done to accused and to appear to be done.

It is the duty of Courts in criminal trials to give a judicial finding, after applying their minds judicially to the facts of the case, with reference to the case of each individual accused, and the evidence adduced on behalf of the accused in support of their case must also be carefully and fully considered. Though the Courts may not

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10 E.P. 346 = 172 I.C. 780 = 4 B.R. 165 =
39 Cr.L.J. 156 = A.I.R. 1937 Pat. 662.

—Evidence—Evidence of children—Conviction on—
—Propriety.

The evidence of children unless immediately available and unless eliminated convict on C.J. and B. EMPEROR.

1938 P.W.N. 266 = 10 E.P. 456 =
39 Cr.L.J. 384 = A.I.R. 1938 Pat. 153.

—Evidence—Interested evidence.
Interested evidence is not necessarily false. (Davis, J. C. and Lobo, J.) JADO RAHIM v. EMPEROR.

178 I.C. 520 = A.I.R. 1938 Sind 202.

—Evidence—Murder of mother—Passers-by attracted by cries of child—Witnesses may speak not only of nature of cries but also of what child said.

The evidence of the child is not admissible as evidence.

plains their conduct. (Davis, J. C. and Hazeltwa, J.)
RABAN LALU v. EMPEROR.

175 I.O. 324 =
10 E.S. 296 = 39 Cr.L.J. 618 = A.I.R. 1938 Sind 97.

—Evidence—Post mortem certificate—If evidence—
—Value and use of.

A Criminal Court is not justified in treating the post mortem certificate as evidence and in extracting a sentence from it and relying on it as if it were positive

Mossett, J.J.) RAMASWAMY v. EMPEROR.

1938 M.W.N. 36 = 47 L.W. 272 =
A.I.R. 1938 Mad 336

—Evidence—Prosecution under S. 401, I. P. Code

—Evidence of association prior to period of charge—
—Admissibility.

In a prosecution under S. 401, I. P. Code, evidence of association before t corroborate other period. (Horswill,

—Evidence—Supervision.

There is no provision in the Indian law requiring more than one witness to prove any fact. (Weston.) MEHTA v. EMPEROR.

1937 A.M.L.J. 134.
—Evidence—Supervision notes from police diaries sent to Court—Admissibility.

Dhaval, J.—It is a mistake to exclude supervision notes from the police diaries sent to the Courts. The investigation may be (and usually is) in the hands of the diaries sent by super- the diaries be left in rily determines the course of the investigation at point after point. Their exclusion is apt to lead to a miscarriage of justice, if not also to leave a suspicion that something must be

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wrong with the investigation which it is not desired should be known to the Courts. The notes cannot of course be used as evidence, any more than can the diaries of the investigating officer himself; but they usually make these diaries more intelligible and more ad trials. (Dharit and MANU CHICK.

626 = 39 Cr.L.J. 635 =
= A.I.R. 1938 Pat. 290.
can take the place of proof. See CRIMINAL TRIAL—PROOF OF GUILT.

40 P.L.R. J. & E. 1.

—Evidence—Value of—Eye-witnesses first telling their stories 40 days after occurrence.

The oral evidence of eye-witnesses who first told their stories about 40 days after the occurrence is not fully worthy of credit, and if further the circumstantial evidence is not such that it is inconsistent with the innocence of the accused, the accused must be acquitted. (M. C. Ghose and N. A. Khundkar, J.J.) EMPEROR v.

98 C.L.J. 500.
mation report

s only a sus-
on its guard
for rejecting

evidence which is otherwise fully entitled to credit. (Blacker, J.) RADHA KISHEN v. EMPEROR.

A.I.R. 1938 Lah. 714.

—Evidence—Value of—Prosecution witnesses not mentioned in first information report and not independent.

The fact that none of the prosecution witnesses was mentioned in the first information report and most of them are not independent and made some statements

the com-
sufficient
are suffi-
ness and
nce with
rated by
o reason
ses were
are not

totally independent. (Zia ul-Hasan, J.) DILDAR KHAN v. EMPEROR.

173 I.O. 339 =

1938 O.A. 154 = 1938 A.Cr.C. 11 = 1938 M.L.R. 108 =

1938 O.W.N. 184 = 10 E.O. 220 = 39 Cr.L.J. 330 =

A.I.R. 1938 Oudh 88.

—Evidence—Value of—Statement of formal wit-

ness for prosecution assisting defence.

of a formal witness for the prosecution, to assist the defence, does not have that It would have had if he had been a witness ation as to the material facts of the case.

RADHA KISHEN v. EMPEROR.

—Evidence—Value—Test—Number of witnesses.

More numbers cannot be taken into account for determining the value of the evidence. (Mulla, J.) PIR BUX v. EMPEROR.

1938 A.W.R. (H.M.) 656 =

1938 A.Cr.C. 122.

—Evidence—Witness—Duty of prosecution and of Court to call—Omission to call witnesses—Effect of and inference to be drawn from—Considerations—Duty of Judge to tell jury.

When the prosecution have produced sufficient evidence and the best evidence, it is not always incumbent on them to produce all possible evidence on less important facts. It cannot be laid down as a general proposition of law that the prosecution is or is not obliged

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to examine persons as prosecution witnesses as to whom the prosecution have reason to believe that they will not help the prosecution case, or that the Court is not bound to examine any person as a Court witness unless the witness appears to be essential to the just decision of the case. The effect of, and the inference to be drawn or not to be drawn from, the absence of relevant witnesses from the witness-box are matters to be considered with reference to the circumstances of each particular case and the facts which the witnesses, if called, would have been required to prove. The jury should be asked by the Judge to consider the same in the light of those circumstances and those facts. The Judge should give assistance to the jury in deciding whether to draw inference from the failure of the prosecution to call certain witnesses (*Noor and Rowland, JJ*)

MIA v EMPEROR.

1933 P W N

A.I.R. 1938 Pz

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—Jurisdiction—Calendar case triable by First Class Magistrate on the file of Sub-Divisional Magistrate—Transfer by latter to Second Class Magistrate with direction to treat them as preliminary register cases—Propriety. See CR. P. CODE, S. 192.

(1938) 1 M.L.J. 403.
—Jurisdiction—Statement of accused disclosing offence not triable by magistrate—If ousts jurisdiction of magistrate.

A statement by an accused person that the offence committed by him is a more serious one than one triable by the magistrate does not deprive the magistrate of

—First information report

The presumption with reference to the first information report is that it represents the actual given to the police and taken down by defence should not be denied the right to comment because of the failure of the prosecution to prove it. If the prosecution suggests that it is

—Presumption of innocence—Doctrine of

cised, it is exercised *ex debito justitiae* to do that real and substantial justice for the administration of which alone Courts exist, but the Court, in the exercise of such inherent power, must be careful to see that its decision is based on sound general principles and is not in conflict with them or with the intentions of the Legislature as indicated in statutory provisions. Certain persons were charged with conspiracy to commit criminal breach of trust and the case was over, the charges were framed together and it was avoided misjoinder of groups of the accused persons and or trial of one of them.

Held, that the Magistrate had acted in exercise of his inherent power in or

—Procedure—Charge—Dropping of—Rule—Accused committed on several charges—Sessions Judge framing new charge and trying only under that charge—Absence of any order or trial in respect of other charges—Legality.

It is better to have too many charges than too few, and once a charge has been framed, it should not be dropped until the conclusion of the trial unless on the

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—*Nattukottas Chetties*—"Samans"—Rights of foreign agents to

ALI 40 P L R 796—A I R 1938 Lah 792.
—*Proof of—Length of time necessary*
Proof of the existence of custom over a period of

—*Proof of—Requisites—Different versions—*

—*Proof—Few instances of recent times—Sufficiency.*

A custom can be established only by proof of 'ancient' instances and a few instances of rec sufficient A I R 1937 Lah, 451 F Chand, J) NOTAN DAS v KARAM 40 P L R 690=177 I C 513=1" A I R

—*Proof of—Immemorial user—Presumption as to Limits of rule—Right to exclusive user of public tank.*

Where a declaration was sought that the plaintiffs

the evidence for custom must be substantial. The custom must be certain. Where a plaintiff was changing the terms of an alleged custom from time to time and failed to formulate the custom clearly and consistently

A I R 1938 All 345.
—*Proof—Nature of evidence necessary—Strict construction*

A custom to be a rule having the force of law must

CROWN GRANTS ACT (1895), S. 3.

general law of the land be. By reason of this section, a restrictive clause in a Crown lease which compels the lessee to refer any boundary dispute with the adjoining lessee, only to revenue authorities, is not affected by S. 28 of the Contract Act. But such a clause can be availed of by a lessee of an adjoining jurisdiction of the Civil Court, for the predecessors in interest were not parties entered into between the Secretary of State in Council and the other lessees' predecessors in interest. (*Mitter, J.*) **JANENDRANATH NANDA v. JADUNATH BANERJI**, I.L.R. (1938) I Cal. 626=42 C.W.N. 81=A.I.R. 1938 Cal. 211.

S. 3—Scope and effect of—If confers a right to sue.

All that S. 3 of the Crown Grants Act means is that the Crown is entitled to put such conditions in a grant which a private individual could not, but the only advantage to the grantee is that the grant to him is not

1938 O.W.N. 462=1938 O.L.B. 244=10 R.O. 287=A.I.R. 1938 Oudh 175.

by the Crown either by virtue of an enactment or by a grant under the Crown Grants Act is clear and explicit.

enjoy the rents and profits during his life and they are attachable and saleable; (6) and the proper order to be made was to direct the appointment of a receiver.

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(*Venkataramana Rao, J.*) **SUNDARARAJULU NAIDU v. PAPIAH NAIDU**, I.L.R. (1938) Mad 767=1938 M.W.N. 440=A.I.R. 1938 Mad. 624=(1938) 1 M.L.J. 686.

Jain.
Nattukottai Chetties.
Pleading and proof.
Proof.
Validity.

Abrogation—Proof.

It cannot be said that once a custom is proved to exist, it cannot be altered except by subsequent legislation. It is well settled that just as the will of the community established a custom in the first instance, so the expression of its collective

established practice extending
riod, abrogate or change the
) **ABDUL MAJID v. SUBA**
40 P.L.E. 588.

Village expanding and
un—if proves abrogation of

custom.
Where a *wajib-ul arz* has recorded the existence of

Proof—Wajib-ul arz re-
alienations by non-proprietors
instances of alienation—Effect

has recorded the existence of
alienations by non-proprietors in a
village, a change of custom could not be established
except by overwhelming testimony of a very large
by non proprietors
could not be com-
except that the
of particular sales
would ordinarily
the of the purchaser
would give title to
of the village site,
s of the proprietary
had been extinguished.
HERA RAM.
40 P.L.R. 990.

Customary right—Easement—Distinction

customary right is not an easement properly so
An easement proper belongs to a determinate
or persons in respect of his or their land. A
s of persons like the inhabitants of a locality,
unless incorporated as a determinate juridical person.
A customary right belongs
ular. Easements are, so to
longing to particular persons,
public rights annexed to the
place in general (*Biswas, J.*) **HAIRI SADAN DE v.**
RADHIKA PRASAD FANDIT. 66 C.L.J. 270=
175 I.O. 252=10 R.O. 781=A.I.R. 1938 Cal 202.

Customary right—Village path-way—Customary
easement—Proof of.

Persons claiming a customary easement have not only
to prove the elements required by S. 26 of the Limitation

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Act, but also something more, namely, that the custom set up was ancient, continuous peaceable, certain and compulsory. Where a pathway as a village pathway, and not as a pathway, it is necessary to show that was of the pathway as a village pathway, shown to have been used by the inhabitants of the village concerned, such and not as mere general public. (*Birwa, J.*) HARI SAD RADHIKA PRASAD PANDIT. 66 C 175 I C. 252=10 B C. 784=A.I.R. 193

—Hajir chaharam—Liability to pay—to involuntary sales also

Where by a custom the Zamindar is entitled in the

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family (*Weston, J. C. S.*) CHAND KOER v. FEN RAJ. 1938 A M L J. 79.

—Jains—Widow if takes absolute estate.

The widow takes an absolute estate general and not merely in some part (*Stone, C J. and Rose J.*) TULSIRAM v. CHUNNIL PANCHAMSAO A I R 1938 Lah. 792. —Nattubhai Chettiar—Samani—Right of foreign agents to.

—Pleading and proof—Necessity—Established custom of universal nature

If a custom is universal and established by a series of decisions, a stage may be reached when the custom

—Proof—Few instances of recent times—Sufficiency.

A custom can be established only by proof of 'ancient' instances and a few instances of recent times are not sufficient A I R 1937 Lah 451 F B. Foll (*Tek Chand, J.*) NOTAN DAS v. KARAM HUSSAIN SHAH 40 P L N 690-177 I N 513-11 B L 333 (2)=A.I.R. 1938 Lah 447

—Proof of—Immemorial user—Presumption as to—Limits of rule—Right to exclusive user of public tank.

Where a declaration was sought that the plaintiffs were entitled in the exclusive user of a public tank, the ground of an alleged immemorial user.

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tenure or a contract or a family right, is repeatedly

unless they bind created by them as evidence in J. TULSIRAM

KHIRCHAND v. CHUNNIL PANCHAMSAO. A I R. 1938 Nag 391.

—Proof—Judicial decisions—Value of.

Judicial decisions on questions of custom are not of and case. AJIR 40 P L R 796=A I R 1938 Lah. 792.

—Proof of—Length of time necessary. Proof of the existence of custom over a period of

existence of substituted custom can be proved by a series

of—Requisites—Different versions—

Proof of custom must be substantial. The custom must be certain. Where a plaintiff was changing the terms of an alleged custom from time to time and failed to formulate the custom clearly and consistently the custom cannot be said to be proved (*Bennet and Ganga Nath, JJ.*) JALESHWARI PRATAP NARAIN SINGH v. PALESHWARI BAKSH SINGH 1938 A W R (H C) 234=175 I C 594=10 E A 705=1938 A L R. 456=A I R 1938 All 345.

—Proof—Nature of evidence necessary—Strict construction

A custom to be a rule having the force of law must must and be and

RAGHURAJ v. BINDRA PRASAD. 1938 G W N. 547=1938 O A. 447=

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1938 O.L.R. 252=175 I.C. 32=10 R.O. 294=
1938 E.D. 575=A.I.R. 1938 Oudh 140 (F.B.).

—Validity—Custom opposed to public policy—
Transfer of office of temple trustee in return for monetary consideration—Legality of *See* MADRAS HINDU
RELIGIOUS ENDOWMENTS ACT, S. 57.

—Validity—Essentials—
of "pahunch" or ordinary rice

Before a Court of Law can
a valid one it must have the
reasonableness; (2) certainty

ordinary law, it must be established by instances that the
custom had come into
consistent with the law
nevertheless prevailed,
cantile usage it is not
alleged practice is what
A custom which makes

pahunch being to escape payment of the requisite
stamp duty which would otherwise be required for trans-
ferring it (*Mohla, J.*)

CHETUMAL BULCHAND
173 I.C. 591=10 R.O.

—Validity—Seaveng
ferability—Legality of. *See* SPECIFIC RELIEF ACT,
S. 56.

—Validity—Des
District—Adoption of
—ADOPTION

—Validity—Essen
A local custom need

LAXMANAPPA RAMAP

—(Jammu and
of—Chib Rajputs of

A childless Chib Raj
unrestricted powers in
ancestral landed proper

J.J.) WALIDAD KHAN v. MAHOMED KHAN.

40 P.L.R. J. & K. 47.

—(N.W.F.P.)—Validity—Adoption of sister's son

—Rawas.
The Rawas who claim a Rajput origin can adopt the
son of a sister. (*Darling, S.M. and Bonford, J.M.*)
GANGA DEVI v. MOHAMMAD HABIBUR RAHMAN
KHAN. 1937 B.D. 583.

—(N.W.F.P.)—Alienation — Powers of

—Awni.
The case of each tribe should be decided on its own
custom. Awnas are governed by Awan Customary
law and the mere fact that they live in a village Kakar
which is part of Tapa Dandzal does not alter the position.
According to the customary law of Awnas, the
Awnas have unrestricted power of making testamentary
dispositions of their property and hence a will in favour
of sister's sons to the total exclusion of collaterals is
valid. (*Almond, J.C. and Mir Ahmad, J.*) ISMAIL

CUSTOM (PUNJAB).

KHUSHAL v. YAKUB MADAD KHAN.

177 I.C. 793=11 R. Pesh. 35=

A.I.R. 1938 Pesh. 58.

—(N.W.F.P.)—Alluvion—Right of riparian

owner.
Where a riparian owner claims land formed by

owner of the land as soon

(*Almond, J.C.*) PASAND

154=11 R. Pesh. 17=

A.I.R. 1938 Pesh. 48.

to cultivator
it to make—
—Content of

the village of
effect that the allocation of
by the *lambardar* and the
be a new one or an aban-
se is standing, the *punches*
can be allotted to a cultiva-

tor. (*Agarwala, J.*) GAYA SAHU v. DEBARCHAN
BUNNETT 1938 P.W.N. 524=19 Pat L.T. 663.

—(Abadi)—Building sites granted to
—Terms of grant—Presumption.

villages, it is a matter of presumption
that the *abadi deh* is a common property of the proprie-

transfer and that this condition has been accepted by
any non proprietor accepting the grant. The presumption
may be rebutted in a variety of ways. It may be
shown that the course of dealings between proprietors
and non-proprietors over a long term of years has been
such as to indicate that no restriction on transfer is
implied when a grant is made. But the presumption is
not rebutted by the mere fact that a number of *fucca*
houses have been built on the sites by the non proprie-
tors in the village. (*Beckett, J.*) CHUNI LAL v. BEANT
SINGH. 40 P.L.R. 634=178 I.C. 551=

A.I.R. 1938 Lah. 512.

—(Punjab)—Abadi—Ferozepura—Right of re-
version in malis of houses of non proprietors.

On the non proprietors leaving, the right of reversion
of the malis of the houses of the non proprietors in
Abadi Ferozepura held vested in the founder of that
abadi alone and not in all the proprietors of the village.

CUSTOM (PUNJAB).

(7.
A.)

D.

management.

It cannot obviously be considered good management to sell property when there is necessity for a loan only. (*Bhude and Beckett, JJ*)
HINDAR SINGH.

(Punjab)—Alienation—An.

CUSTOM (PUNJAB).

—Ancestral property—
sold was house property
sufficient to take it out

the Court on fair and rational grounds. Amounts borrowed by a big zamindar with a large income and living in a style suited to his social status, for costly clothes and ornaments cannot be considered to be a very unreasonable expenditure so as to exclude the debts from the category of "just" debts (*Bhude and Beckett, JJ*) IQBAL SINGH v. MAHINDAR SINGH.

A.I.E. 1938 Lah 648.

(Punjab)—Alienation—Ancestral land—Necessity—Purchase of ornaments

(Punjab)—Alienation—Ancestral land—Necessity—If must exist at the time of alienation

Even a male proprietor is not entitled to encumber ancestral property for his future requirements, the necessity to support an alienation of ancestral property must exist at the time of the alienation. (*Bhude and Beckett, JJ*) IQBAL SINGH v. MAHINDAR SINGH

A.I.E. 1938 Lah 648.

(Punjab)—Alienation—Ancestral property—Alienation in lieu of dower debt—Validity.

Under Mahomedan law dower is to be regarded as a debt due from the husband to the wife. This debt is payable on demand. Such debt being a just antecedent debt arising out of the contract of marriage the husband is fully entitled to alienate ancestral land in favour of his wife in lieu of this debt provided it is not unreasonably high. The question as to what is regarded as a reasonable amount of dower is a question of custom and it is incumbent on the party to raise this point in its pleadings and to lead evidence thereon. Where a

(Punjab)—Alienation—Antecedent debt—Debts incurred after agreement of sale and latter included in consideration for that sale.

An "antecedent debt" means a debt which is not only antecedent in time, but also antecedent in fact, i.e., it must be truly independent of the transaction impeached. In other words, the two transactions must be dissociated in time as well as fact. Debts which were incurred after agreement relating to the sale was entered into and which were later on included in the consideration for that sale cannot be properly held to be

(*Beckett, JJ*) IQBAL
A.I.E. 1938 Lah. 648.

—Necessity—Antecedent
ordinary household necessities

It is quite a usual practice for agricultural families to incur joint debts for ordinary household necessities and both parties commonly gain the benefit of the joint credit so obtained. Where there is no reason to suppose that the expenditure covered by a joint debt has been wastefully extravagant, a joint debt can be regarded as a just antecedent debt. (*Beckett, J.*) ALI MOHAMMAD v. NUR MOHAMMAD.

A.I.E. 1938 Lah. 658.

(Punjab)—Alienation—Necessity—Enquiry by alienee—Sufficiency.

The onus lies on the alienee to prove either that there was legal necessity in fact which would justify the alienation, or that he made a proper and bona fide enquiry into the alleged necessity and satisfied himself as to the existence of such necessity. If he fails to prove that there was a necessity in fact, alienation may be upheld if he proves that he made enquiry as to the existence of the alleged necessity, and that the

CUSTOM (PUNJAB).

sent to him were such as, if true, would have justified the transaction. If he discharges this burden, he is bound to see that the money paid by

—(Punjab)—Alienation—Non proprietor—Rights of—Village Chotala in Sirsa Tahsil of Hissar District.

on
in
Du

—(Punjab)—Alienation—Powers of—Ancestral property—Sanda Jats and agriculturists of Mianwali District

Among Sanda Jats and the agriculturists of Mianwali District, generally, a male proprietor has unrestricted power of alienation in respect of ancestral property and such property can be attached and

for realization of his unsecured
(*Tek Chand and Abdul Rash*
NAWAZ v KAURA RAY

178 I.C. 74=

—(Punjab)—Alienation—Powers—Gift by widow in favour of daughter—Rohtak District.

According to the entry in the *riwaj* of the Rohtak District a daughter has no right to succeed to her father's landed property, whether ancestral or acquired, and a widow has no right to her husband's property whether ancestral or acquired.

When such entry is challenged the burden is on the party to prove that the entry is wrong. (*Jai Lal and Dalip Singh, J.J.*) MT. JAWAHIRAN v. ILAZARI.

40 P.L.R. 937= A.I.R. 1938 Lah. 662

—(Punjab)—Alienation—Right to c. Sale by plaintiff's grandfather long before was begotten—Consent given to sale by father.

The alienation by sale of the ancestral

the sale. Of these, one was the father of the plaintiff who had attested the sale. The other was a defendant in the suit in 1901, was dismissed as a defendant and the plaintiff brought the suit on the ground that the sale was without consideration. The plaintiff proved that the sale was a bona fide sale and not a reversion.

Held, that the sale having become indefeasible at the instance of any reversioner long before the plaintiff was begotten, the plaintiff had no *locus standi* to sue.

Held, further, that the plaintiff's suit was barred by the consent given by his father to the sale. (*Tek Chand, J.*) SOHAN SINGH v. DANU.

40 P.L.R. 728=A.I.R. 1938 Lah. 467.

CUSTOM (PUNJAB).

—(Punjab)—Alienation—Setting aside—Declaratory.

Prima facie defendant and no question of collusion with the defendant against whom relief is claimed really arises if it does, e.g., in suits for divorce, etc. Again when such a suit is instituted on behalf of a minor, there cannot obviously be any collusion on the part of the plaintiff in the above sense, as a minor is legally

Even when the plaintiff is a minor, the court would not set aside the decree in the absence of other relevant facts. This purpose is served by the

(*Beckett, J.J.*) IQBAL SINGH v. MAHINDAR SINGH. A.I.R. 1938 Lah. 648.

—(Punjab)—Alienation—Setting aside—Declaratory suit by son—Collusion—Proof—Son living with father.

Where a son brings a declaratory suit challenging the sale of ancestral property, the mere fact that the vendor was living with the plaintiff is not sufficient to establish collusion. (*Beckett, J.J.*) IQBAL

A.I.R. 1938 Lah. 648.

—(Punjab)—Alienation—Validity—Agriculturist unable to manage cultivation and indebted, selling land to non-agriculturist with sanction of Deputy Commissioner.

who was not able to manage the land, much indebted and not even able to pay the revenue, sold the land to a non-agriculturist with the sanction of the Deputy Commissioner.

Held, that the sale was an act of good management and could not be attacked by his sons. (*Sir Shadi*)

and non-
if whole,

apply the onus is on that party of showing that custom applied, and further he must plead the custom alleged in precise terms and must by evidence establish the custom as pleaded. In many cases the party alleging a custom may be the mere production of the *riwaj-nam* is able to give *prima facie* evidence of the custom alleged and so cast the onus of proof on his opponent, but this circumstance does not obviously affect the universality

CUSTOM (PUNJAB).

of the proposition that he who
plead and prove it. (*Young, a*
Mohar

town.

The Customary law of the District is based on enquiries made in rural areas at the time of the settlement and no representatives from towns are consulted as a rule. The Mahajans of Hissar town, whose main source of livelihood is business not governed by the Customary law. And the mere fact that at the time of preparation of the *riwaj-i-am* was obtaining amongst all Mahajans particularly amongst residents of towns. (*Bhidi, J.*)
PATRU MAL v. BADRI PARSHAD
40 P.L.E. 781—177 I.C. 403—11 B.L. 313—
A.I.R. 1938 Lah. 461.

(Punjab)—Applicability—*Pawals of Bhera*

Where a person asserts that he is governed by custom, it is incumbent upon him to prove that he is so governed and further to prove what that custom is. (*Haid, that Pawals of Bhera in Sha*)
not proved to be governed by custom
by Mahomedan law. (*Abdul Rashid c*

They the special custom, namely, that after the death of a husband leaving a widow without sons and sons by another wife, the widow gets a life interest in half of the property of her husband, is on the widow. Such special custom cannot be established by only one instance to that effect. (*Addison and Abdul Rashid, J.*) **MILKHI RAM v. MT. RAJJI.**
40 P.L.E. 912—178 I.C. 316—
A.I.R. 1938 Lah. 609.

(Punjab)—Gift—Ancestral land—*Araims of Jullundur Tahsil*
Among Araims land made by a the consent of the
Din Ali

for partition.

values.

When the Customary law is silent on a certain point, there is no reason why the local *riwaj-i-am* should not be accepted. As the entries are public documents, these entries can be used as evidence of the existence of a custom, whether instances exist or not. (*Beckett, J.*)
DASAUNDHI v. LAL SINGH.

A.I.R. 1938 Lah. 849.

(Punjab)—*Riwaj-i-am*—Entry in—*Omnibus*—Discharge of entry by earlier *riwaj-i-am* supported by instances.

instances its who alleges a *riwaj-i-am* to onus can be discharged by his *aj i am* supported by instances.

(Punjab)—*Riwaj-i-am*—Entries in—Presumption of correctness—Rebuttal—Judicial decisions to the contrary.

n entry and a after an ide, J.)

366—
A.I.R. 1938 Lah. 309.

(Punjab)—*Riwaj-i-am*—Statements in—Value of.

The statements of customs recorded in the *riwaj-i-am* of a tahsil or district regarding the customary law followed by the various tribes holding land in the tahsil in matters of succession are by themselves strong evidence of the customs followed by members of those (*Coldstream and SINGH.*)
R 1938 Lah. 55.
erved for com-

could be taken until partition, in any part of a

pond reserved for the common purposes of the village or cut trees without the consent of the other proprietors. (*Tekchand, J.*) **RATI RAM v. BALWANT**
40 P.L.E. 633—A.I.R. 1938 Lah. 769.

(Punjab)—*Shamislat land*—Right of co-sharer to erect building.

Per *Din Mohammad, J.*—No individual proprietor can appropriate to himself a portion of the common land without the consent of all other co-sharers and use it in such a way as to affect the rights of all the co-sharers at the time of partition. Where therefore a co-sharer begins building on a part of common land the other co-sharers can restrain him any special damage to be granted in such a (*Abdul Rashid, J.*)

IN v. BHANA 175 I.C. 412—
B.L. 710—A.I.R. 1938 Lah. 296 (B.).
ab)—Succession—Appointed heirs' descent to succeed collaterally in family of ap-

(Punjab)—Succession—Daughter v. Collaterals—*Khatris of Phalsa tahsil of Gujrat District.*

Khatris of Phalsa tahsil of Gujrat District follow custom according to which daughter cannot inherit ancestral property in presence of her father's collaterals. (*Coldstream and Jai Lal, J.*) **NIDH KAU v. GIAN SINGH.**
176 I.C. 801—11 B.L. 230—
A.I.R. 1938 Lah. 55.

(Punjab)—Succession—Daughter—*Ar*—*Ar* property—Exclusion of collaterals—*Khatris Tahsil in Shah*

CUSTOM (PUNJAB).

In the case of Awans of Khushab Tahsil in Shahpur District, according to the custom collateral is not entitled to succeed to the property of a deceased person daughter. (*Bhude, J.*) **SHER KHATUN.** 40 P.L.R. 29=117 I.O. 775=

11 R.L. 366=A.I.R. 1938 Lah. 309.

—(Punjab)—*Succession—Daughter—Rajputs of Garhshanker Tahsil.*

Among Rajputs of Tahsil Garhshanker, a collateral succeeds in the presence of heirs and collateral

of Amritsar district.

Among Sansi Jats of Amritsar district, daughters exclude collaterals the self-acquired property and Skemp. J.J.)

177 I.O. 420=

—(Punjab)—*Property inherited by daughter—Devolution.*

According to the custom recorded in the *riwayat* of Delhi Province, the proprietors of the thulla are

to property inherited by her as a daughter. In the

exclude collaterals.

Among Khokhars daughters exclude male collaterals in succession to the self acquired property of their father. (*Addison, Ag. C.J. and Din Mohammad, J.*) **SIKANDAR v. MT KARAM NISHAN.**

A.I.R. 1938 Lah. 842

—(Punjab)—*Succession—Right of—Sameness of*

got.

—(Punjab)—*Succession—Sisters' sons—Jats of village Dholewal in Ludhiana District.*

Among Jats of village Dholewal which is situated in Tahsil Ludhiana of the Ludhiana District, sisters and their sons do not succeed even in the absence of colla-

DAMAGES.

terals to the self-acquired as well as the ancestral

In a case where a widow has succeeded collaterally, after her death it is the heirs of her husband who have to be sought for and not the heirs of the last male

reversioners.

A decree obtained by an alienee against a widow in respect of an alienation made by her husband during his lifetime is binding on the reversioners, as it is a well recognised rule that a widow represents the estate

such rights.

Where a widow of a deceased tenant to whom land was granted as a tenant on abadkari or peasant terms, the owner, and her acts. **SINGH v. ab. 271= .O. 331= Lah. 554.**

—(Punjab)—*Widow—Rights of—Property*

District has power, in the absence of sons, to dispose of by will both his ancestral and self acquired property.

bequest.

ing the *Stals* of Jhang, a re of his sons as against is ancestral (*Dalip MOHAMMAD v. ZUL 315=40 P.L.R. 145= A.I.R. 1938 Lah. 312.*

recuted by codicil—Law

applicable.

A Cutchi Memon is governed by the Mahomedan Law so far as the execution of his will and a codicil is concerned. 43 Bom. 641, Rel. on. (*Wadsworth, J.*) **MAHONED YOONUS v. ABDUR SATTAR ISMAIL.**

47 L.W. 719=1938 M.W.N. 699=

A.I.R. 1938 Mad. 616=(1938) 1 M.L.J. 444.

DAMAGES.

See also (1) CONTRACT ACT, SS. 73-75.

(2) INTEREST.

(3) TORT—DAMAGES.

DAMAGES.

Claim of—Obstruction to plaintiff's enjoyment of rights by decision of Court in favour of defendant—Liability of defendant in the circumstances.

Remote damages—If can be recovered—Rule.

Both as regards actions in contract and actions in tort, the damage which can be recovered by a plaintiff

the immediate consequence of the breach of contract or tort and the damage or injury complained of. Plaintiffs commenced to manufacture brick on a plot of land which they took on lease from certain Mahomedans. The defendants alleging that the plaintiff were desecrating a grave yard approached the police and informed the police that the action of the plaintiffs would lead to a

DEBTOR AND CREDITOR.

assignment of the debtor's property to a trustee for realization and distribution of the proceeds rateably amongst all the debtor's creditors, or amongst those who assent

estate. When the instrument expresses the arrangement to be with the creditors generally, or all creditors who assent to it, any creditor who actually or by his conduct

the conditions of the arrangement which apply to the creditors. If he takes any step which is inconsistent with or opposed to those conditions, as, for instance, by bringing an action against the debtor to recover his debt, he will be liable to be excluded from the benefit of the arrangement. This obligation is binding not only on creditors who execute a deed of arrangement or ex-

DEBTOR AND CREDITOR—Appropriation of payments—Decree debt—Sums received by way of rateable distribution—Mode of appropriation—Costs awarded under decree—If to be excluded. *See C. P. CODE, S. 73* 1938 M.W.N. 1210.

against other—Principles *See LEASE—ASSIGNMENT BY LESSEE.* 40 Bom.L.R. 497.

Place of repayment—Negotiable instrument.

The ordinary rule under which the debtor must seek his creditor does not apply in the case of a negotiable

debt is the mutual agreement of the creditors to forego parts of their claims. One method of arrangement of an insolvent debtor's affairs which the law recognizes is an

upon the owner of the property, who alone stands towards the trustees in the relation of *cestui que trust* can recall the money and authority at pleasure. It is

DAMAGES.

Claim of—Obstruction to plaintiff's enjoyment of rights by decision of Court in favour of defendant—Liability of defendant in the circumstances.

complained of and damage or injury—Necessity for—Remote damages—If can be recovered—Rule.

Both as regards actions in contract and actions in tort, the damage which can be recovered by a plaintiff complaining of a breach of contract or from the action of the defendant of a tort. To entitle the plaintiff to there must be something immediately flowing out of the breach of contract or tort complained of, something immediately connected with it, and not merely connected with it through a series of causes intervening between the immediate consequence of the breach of contract or tort and the damage or injury complained of. Plaintiffs commenced to manufacture brick on a which they took on lease from certain The defendants alleging that the plaintiff

DEBTOR AND CREDITOR.

assignment of the debtor's property to a trustee for realization and distribution of the proceeds rateably amongst all the debtor's creditors, or amongst those who assent

debtor under a revocable authority to deal with the estate. When the instrument expresses the arrangement to be with the creditors generally, or all creditors who assent to it, any creditor who actually or by his conduct

come in under the arrangement and share in its benefits notwithstanding that the proper time for accession has elapsed. On the other hand, a creditor entitled to the benefit of an arrangement must perform fairly all the conditions of the arrangement which apply to the creditors. If he takes any step which is inconsistent

plated damage by rain as the result could the damage by rain be necessarily from the action of the damage was too remote and ther

DECLARATION.

arrangement by the debtor for his own convenience only and there can be no privity between the agent and the creditors. Where, however, a trust in favour of creditors has been communicated to the creditors, it can no longer be revoked by the settlor, because the creditors, being aware of such a trust, might have been thereby induced to a forbearance in respect of these claims which they would not otherwise have exercised, and a fortiori will this be the case when the deed has been acted upon. The communication may be proved by the creditors by their having acted upon it or being induced to do so by English cases relied on. (*Nadhi and Stodari, J.*) NAGABH

b. 42.

—*Granting of—Discretion of Court—Wrongful dismissal of servant—Refusal of declaration where damages adequate remedy.*

In the case of a wrongful dismissal of a servant, the relief by way of damages is an adequate remedy and that being so, a Court can in its discretion refuse a declaration or injunction. (*Harries and Rachhpal Singh, J.*) PRABHU LAL
BOARD OF AGRA.
1938 A.W.R. (H O) 223=1
1938 A.L.R. 5

DECLARATORY DECREE. See SPECIFIC RELIEF ACT, S. 42.

DECREE

Appellate decree
Conditional decree
Construction
Declaratory decree.
Instalment decrees.
Payment under.
Recitals in.
Rights under.
Setting aside.

—*Appellate decree—Ruling decree*

Where there is an appellate decree, that is the decree that has to be construed, and that decree takes the place of the
Digby, J.)
RAO RAMJI.

—*Conditional decree—Time limit imposed for fulfilment of condition—Appeal filed—Running of time.*

Where a decree directs something to be done by way of a condition and imposes a time limit, the time will run, when an appeal is filed, not from the date of the original decree but from that of the appellate decree, although the position is decree is carried into execution. (*Akhandkar, J.*)
KANTA BEHARA

—*Construction—Decree*
Executability—Presumption

DECREE.

—*Construction—Direction to party to deposit amount in Court within fifteen days from date of decree—Interpretation of—Date of decree—If to be excluded—Intention of Judge—If material. See GENERAL CLAUSES ACT, S. 9. 40 Bom.L.R. 692.*

—*Construction—Executability—Decree containing provision for payment of instalments—Execution application on default in payment—Subsequent compromise relating to manner of payment—Liability of surety under original decree kept on foot—Original decree, if*

a decretal liability of a
It did not provide for

upon the observance of which provisions the judgment-debtors could escape the decretal liability. On the judgment-debtors failing to observe these provisions, an application for execution of the decree was taken out and a compromise was again arrived at modifying only the provisions upon the observance of which the full decretal liability could be avoided. Under the new compromise the liability of the surety for the decretal liability kept on foot and operate to render created by the

Held, that the compromise was only a modification of

—*Construction—Liability for costs—Mortgage suit—Subsequent purchaser—Personal liability for costs. See MORTGAGE—MORTGAGE SUIT.*

177 I.C. 689=1930 P.W.N. 710.

—*Construction—Reference to nature of suit—*

have regard to the
proceedings which
which leads to an
anomalous result ought to be avoided (*Niyogi, J.*)
CHINTAMAN RAMJIPANT v. GOVIND VITHAL

175 I.C. 763=11 R.N. 12=A.I.R. 1938 Nag. 376.

—*Construction—Scheme for temple—Provision conferring right to vote on Vaishnavas of Tengaral sect—"Untouchable" Vaishnavas—If excluded—Prin-*

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DECREE.

of untouchables as such. The burden is upon those who deny that the words are intended to mean something different from what they mean. The fact that for many years (ninety years) no member of the untouchable community ever claimed to be included in the voters' list signifies nothing. From the fact that no claim has been made, it does not follow that had the claim been made and contested, it would have been disallowed. Nor would the fact that the community abstained from making a claim for ninety years destroy their legal rights. "It must be remembered that the necessity of the times often forced on men customs which in later years were not necessary. (*Venkataramba Rao and Abdul Rahman, JJ.*) SUBBARAYALOO v RANGANATHA MUDALIAR, 1938 M W N 376 = 47 L.W. 480 = A I.R. 1938 Mad 571 = (1938) 1 M.L.J. 530.

—*Instalment decree—Default clause—Waiver—Right of decree-holder.*

—*Payment under—Compromise decree providing for instalments to fall due on specified dates—Specified*

Abdur Rahman, JJ) SURYAPRAKASA RAO v. VEN. KATARATNAM 178 I D 462 = 1938 M W N. 389 = 47 L.W. 389 = A I.R. 1938 Mad 523 = (1938) 1 M.L.J. 342

—*Recitals in—Effect of.*

A recital in a decree taken apparently from the plaint and not contained in the operative portion, is merely

42 U W N 831 = A I.R. 1938 Cal 511.

—*Rights under—Determination—Interpretation*
The rights of the decree holder under a decree mainly depend upon the Inter.
C.J. and Digby, J.)
BATTASRAO RAMJI.

—*Setting aside—by plaintiff on account setting aside decree.*

A decree is not liable of fraud merely because on the part of the plaintiff in the decree was passed, when such misrep account of ignorance. (*Cellister v KAZIM ALI KHAN & OM PRAKASH.*)

172 I D 337 = 1

DEDICATION.

ground. (*Sen, J.*) SAGARESWAR CHATTARAJ v. BABULAL CHAITOPADHYAYA. 68 C L J. 75.
—*Setting aside—Judgment passed without jurisdiction—Right of suit.*

A separate suit is maintainable for setting aside a decree on the ground that the Court passing had no jurisdiction to pass it. (*Addison and Din Mohammad, JJ.*) INTIZAMIA COMMITTEE v CENTRAL BANK OF INDIA, Ltd A I.R. 1938 Lah. 129.

—*Setting aside—Mistake of parties—If ground for setting aside. See CONTRACT ACT, S. 20*

1937 A.W.E 811 = 1937 A L J. 1095 =

A I.R. 1937 All 731.

—*Setting aside—Right of—Person not party to decree*

No person who is not a party to a decree can claim to have it set aside on the ground of fraud or collusion. All that he can claim is that the decree may not affect his rights. (*Addison and Din Mohammad, JJ.*) INTI-

—*and during father's life time—Maintainability.*

Persons who are parties to a suit are entitled to main

—*and does not depend upon whether they have become trustees or not on the date of the suit. There is no reason why persons who are themselves parties to suit and decree should not have the right to sue to obtain a declaration that the decree is void. (Varadachariar and Abdul Rahman, JJ.) ARAVANUDHA IVENGAR v. RAMANUJA IVENGAR*

48 L W 770 =

1938 M W N. 1153 = (1938) 2 M L J 982.

—*sue—Court passing decree*

See C. P. CODE.

42 C.W.N. 375

—*Defects in service of summons.*

Defects in service might be grounds for setting aside an *ex parte* decree under O. 9, R. 13, C. P. Code, but

ty, it is not

DEED.

Consideration.
Construction.
Execution.
Liability under.
Validity.

—Consideration—Burden of proof—Sale deed reciting payment of price—Plea of want of consideration—Onus.

Where the fact that consideration was paid in the presence of the Registrar is recorded in the sale deed, the onus to prove that consideration did not pass and that the sale deed was fictitious is on the party alleging it to be so. (*Wari and Manohar Lal, Jf.*) **JOTI LAL SAK v. MT. RAMESWARI KUER.**

176 I.C. 129 = 4 B.R. 682 = 11 E.P. 51 =

—Consideration—Onus of
by Registrar reciting payment of
of—Denial of consideration—Onus.

The onus of proving that a transaction recited in the endorsement on a bond which is witnessed by the Registrar is untrue is on the party who denies the truth of the statement
endorser
paid, it

deration has passed. It is then for the party
consideration to prove that consideration has not

(*Wari, A. C. J.*) **NATHUNI SAK v. LACHHMINIA.**

1938 P.W.N. 773.

for possession or
to the vendor. (
v. MALHAR, I

—Consideration—Impeaching of—Onus.

A person having an undoubted right to convey certain

DEED.

BALLABHJI.

176 I.C. 57 = 11 R.N. 24 =
A.I.R. 1938 Nag. 30.

—Construction—Boundaries—Mistake in description of property within—Rule to be observed.

When the description of boundaries is precise and accurate such description ordinarily will override mistakes or omissions in the description of property within those boundaries. (*Weston.*) **RAM NATH v. BAHADUR SHAH KHAN.** 1938 A.M.L.J. 56.

—Construction—Boundaries and area—Surrounding circumstances—When can be looked to—Intention of parties—Grant—Extent of property granted—Ascertainment—Falsa demonstratio—Doctrine of—Applicability and value of.

—Construction—Boundaries and area—Surrounding circumstances—When can be looked to—Intention of parties—Grant—Extent of property granted—Ascertainment—Falsa demonstratio—Doctrine of—Applicability and value of.

in the deed. Where the terms of the deed are not clear and unambiguous and there is some inconsistency between the different parts of the same document, the only

boundaries are undisputed or can be definitely ascertained, the extent, which is obviously wrong, according to

entire extent of the land within the boundaries given all to the excess of area in about y must

be acted upon and cannot be ignored. All, however, it were certain that only a certain extent is given and no more and that the balance is therefore be entirely

The doctrine of of very little use but any particular manner of a being.

—Construction—Clause in bond that stated t by directors have within

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DEED.

Held, such a clause could bring an indebtedness not the bond (Lord Thankert v. D. M. C. HULME KING

11 E.P.C. 31=

—Construction—Conveyance—Land conveyed excepting "all coal and other minerals"—Vendee's right

as the company may consider necessary for the purpose of working and removing the said coal and minerals"

Held, that the words "all coal and other minerals" meant grammatically "all coal and all other minerals."

All minerals were therefore excepted and there was no

come within the definition of, minerals are therefore excepted, and the vendee is not entitled

Russell v. THE KNIGHT SUGAR CO., RAILWAY AND IRRIGATION CO.

10 E.P.C. 192=1

—Construction—Conveyance or containing both declaration of trust and conveyance.

A document containing both a declaration of trust and superimposed upon that a conveyance, has the effect of a conveyance. (*Ameer Ali, J.*) KANTI CHANDRA MUKHERJEE v. JOHN BOISOGONOFF.

42 C.W.N. 937.

—Construction—Conveyance—"Unto and to the use of"

The words "unto and to the use of" in a deed are ordinary words of absolute conveyance under the English

DEED.

any body have any

a gift of all the

ever that might be.

Bat

10 E.N. 287=173 I.C. 145 (2)=

A.I.E. 1938 Nag 185.

donor.

Where a person executes a deed of gift giving properties to another person under the belief that the donee fills a certain character, and the language of the

the donee as filling a certain character must in such cases be taken to be merely descriptive of the person to take under the gift deed (*Abdul Ghani and Nagerwara Iyer, JJ.*) LAKSHAMMA v. ERE GOWDA

16 Mys L.J. 43=43 Mys H.C.B. 352.

—Construction—Maintenance allowance—Hereditary and transferability.

Some members of the family of a wakf brought a suit against the mutallis of the wakf on the footing that the wakf properties were still secular and the defendants

—Construction—Mortgage or lease—Till to decide

—Construction—Mortgage or lease—Till to decide

at present.....No person whosoever has any claim to [amount is due.

DEFAMATION.

(2) TORT—DEFAMATION.

DYING DECLARATION. See EVIDENCE ACT, S. 32 (1).

DEKKAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), § 2—Status waived at the time of decree—Claim to relief in execution—Sustainability.

An agriculturist judgment debtor who at the time of passing the decree agrees to waive his status, can be allowed to go back upon the agreement and claim all

DIVORCE ACT (1869), S. 19.

The mere statement of the petitioner, who is 42 years old and is in this country, because he is in the service of the Railway that he intends to continue to reside here is not proof of his domicile in India. (*Addison, Monroe and Dan Mohammad, J.J.*) **MOODY v. MOODY.**

174 I.O. 992—10 B.L. 652—A.I.R. 1938 Lah. 293.

—S. 14, *Proviso—Applicability—Husband living in adultery is eating wife with cruelty and deserting her—Wife marrying Mahomedan husband believing thereby that marriage with former husband would be dissolved—Right to decree.*

Where a woman who has been treated with gross cruelty and has been deserted by a husband guilty of habitual adultery under the most aggravating circum-

ment—Evidence to prove—*Admission*

S. 10-A of the Dekkhan applies only to a transaction rights and liabilities of the wholly or in part under Ch. I: privilege which the section of alleging an oral agreement different from the written

—S. 16—Decree for dissolution of marriage by

and seek to prove an alleged oral contemporaneous agreement to vary or contradict the terms of the rent note. (*Wadia and Dattaj, J.*) **CHAND v. BALA SAKHARAM.**

—S. 15-D—Sust under—*Admissions.*

A suit under S. 15 D of the Relief Act will only lie on the part of a mortgagee in existence by an agreement cannot be entertained when the mortgage has been redeemed by payment of the amount of the mortgage. (*Broomfield and S.*) **THIMMANNA SUBRAJ**

DISTRICT BOARD—Lease by—Validity—Lease contract—Effect of.

wife for a long time, a subsequent association between the parties, during which the parties, though living under the same roof live as strangers, cannot amount to a break in the association unless the husband on which a suit is brought. (*C.J.*) **FIDELITY**

DIVORCE—Domicile—S.

For a husband to live in open adultery in the same house with another is certainly cruelty. In a petition

proof—Delay—

DIVORCE ACT (1869), S. 37.

i.e., a real sense of grievance complained of, unmixed with any other subsidiary motive, and, as a necessary proof of such sincerity, requires all reasonable promptitude to be exhibited by complainer in seeking legal redress. Delay in itself is not an absolute bar to success in a suit of such nature unless the respondent has suffered in any way by reason of it; but it has important bearing on the evidence by which the impotency is sought to be established and a measure of proof required. The one guiding principle is that great delay in the institution of a suit described by the husband is an objection to be counted for. (*McNair, J.*) BULL. v. BULL.

A.I.R. 1938 (

—S. 37—*Alimony—Gross sum to be paid*
Fixing of amount—Principle—Considerations.
It is difficult to apply any definite principle for the

—S. 37—*Oral alimony made four of Court to vacate it*
Under S. 37 of the any order on the annual income for the passing of the decree to furnish security in judicial separation is, therefore, without jurisdiction. If such an order is not drawn up and filed, the Court has power to vacate being made to RITCHSON I

A.I.R. 1938 Cal 321.

—S. 37—*Power of Court to order furnishing of security for alimony—Extent of.*

Under S. 37 of the Divorce Act, the Court has power to make an order on the husband to secure a gross sum or annual income for the wife. In addition it has also the power to order him to pay to the wife such monthly or weekly sums for her maintenance and support as it may think reasonable. There is however no power given by the section which enables the Court to compel the husband to secure such monthly or weekly payments (*Ponckridge, J.*) RITCHSON v. RITCHSON.

I.L.R. (1938) 2 Cal 22=177 I.C. 729=11 R.O. 269=42 W.N. 317=A.I.R. 1938 Cal. 321.

—S. 37, Paras. 3 and 4—*Scope of—Power to substitute order under para. 3 for prior order under para. 4—Power to award gross sum—Nature and extent of wife's right in regard thereto.*

The provisions of paras 3 and 4 of S. 37 of the Divorce Act, are alternatives at the discretion of the Court. They are merely alternative methods of protecting the successful petitioner, the wife. The proviso to the section in terms relates only to the provisions in para. 4 for monthly and weekly payments, and it does not in terms provide for any increase in the amount of the payments. Though a prior order has been made under para. 4, a Court has power on a fresh application to pass an order under para. 3 of S. 37. The correct interpretation of the third para. of S. 37 is that

EASEMENT.

v. MR. QUIEROS. 174 I.C. 901=10 R.O. 280=1938 O.W.N. 513=1938 I.L.R. 231=1938 O.A. 415=A.I.R. 1938 Oudh 171.
—S. 37, Proviso—*Construction—Power of Court to pass order discharging, varying or suspending*

GOODALL v. H. A. GOODALL. I.L.R. 1938 All 213=174 I.C. 330=270=10 R.A. 569=1937 A.L.J. 1363=1 W.E. (H.C.) 37=A.I.R. 1938 All 121.
Proviso—*Discretion—Exercise of—Delay for modification or suspension or discharge*

—S. 40—*Discretion—Application by guilty party—When to be allowed—Duty of Court to preserve status settle*

Of the exercise of discretionary power, the discretion must be exercised judicially. It is of course open to a guilty party to make an application under S. 40, but such an application should not be readily acceded to, unless special circumstances exist which make it just and proper to make an order upon the application of a guilty party varying a settlement, the *status quo* should remain undisturbed. The Court should not ordinarily deprive an innocent party of the benefit she has benefited H. T.

EASEMENT.

Acquisition.
Customary right.
Easements of necessity.
Extinction
Light and air.
Nature of claim.
Nature right
Quasi easement.
Right of privacy
Water rights

—*Acquisition—Right of pasturage—Inhabitants of village—How may acquire.*

A right of pasturage by virtue of a lost grant cannot be acquired by the inhabitants of a village as they cannot of the a right

EASEMENT.

right of easement by custom. To establish their right of custom, it must be shown that the custom is immemorial, reasonable, and continued without interruption since time immemorial, as well as in fact, as well as in law. (Addison, *Ag. C. J.*) **ABDUL 2 C.W.N. 1102.**

—Acquisition—Tree standing on plot of land of one—Branches overhanging land of neighbour—Right of former to prevent latter from hanging branches—Adjacent plots of same owner—Sale of one with old tree

consequently no right to prevent a person lawfully in possession of land into which or over which its roots or

cut off the branches overhanging his land (which has not been transferred) would be to violate the maxim that the owner shall not deprive from his neighbour

—Customary right—Distinction between. See **CUSTOM—CUSTOMARY RIGHT. 66 I.L.J. 270.**

—Customary right—Proof—Immemorial user, if necessary—Unreasonableness of custom—Test.

In order to establish a customary right it is not necessary to show that it has been exercised immemorial. It is sufficient to show that it has been openly enjoyed for such a length of time as to suggest that the usage has become the customary law of the place. It is proved by agreement or otherwise, the customary law of the locality. It is proved by enjoyment of the right for a long time. Where therefore the Mahomedans immerse their tazias at Muharram in two ghats of a tank for such a length of time as to suggest that the usage has become the customary law of the place, they have a customary right to use the ghats for immersing their tazias. There is nothing unreasonable in the custom.

—Customary right—Right to use ghats of tank for immersing tazias.

EASEMENT.

—Right of way—For the purpose of a customary right and **SABASHA v. BABA I.R. 1938 Nag. 177.** Right to—Partition of joint property.

In order to give an easement of necessity where partition has been made of joint property of several persons, the easement must be necessary for enjoying the share of one of the former joint owners. (*Addison, Ag. C. J.*) **SHEO NATH v. MUGHLA. 40 P.L.B. 787—A.I.R. 1938 Lah. 800.**

—Easement of necessity—When can be granted. An easement of necessity cannot be granted merely to a person who has no other way to the land. (*Addison, Ag. C. J.*)

—Extinction—Imposition of additional burden—Effect of. **40 P.L.B. 787—A.I.R. 1938 Lah. 800.**

The imposition of an additional burden does not have the effect of extinguishing the right of easement altogether.

SHARAD, Ag. C. J. and LAKSHMI CHAND v. TARACHAND TOPANDAS 173 I.C. 380—10 E.S. 209—A.I.R. 1938 Sind. 37.

in easement is not incompatible. (*Griffith, J.*) **SECRETARY TANKO**

A.I.R. 1938 Nag. 415. Right of owner of upper land to use lower land—Nature and ownership of land—Acquis

The right of the owner of a higher land to drain off its surplus rain water through the adjacent owner's ground is an incident of the ownership of land in this country, and need not be acquired by long user; and if the owner of the land at the lower level raises any obstruction to the natural flow of the water, he would be liable to be removed.

it, collect the water into one body and thus discharge it, and the owner of the inferior tenement is, without the positive constitution of any servitude bound to receive that body of water on his property. (*Rowland, J.*) **RAJPATI NARAYAN SINGH v. KIRIT NARAYAN SINGH 122 I.C. 599—10 E.P. 424—4 E.B. 299—Pat.L.T. 806—1937 P.W.N. 578—A.I.R. 1938 Pat. 71.**

—Right to discharge water on a higher level has, as a natural right and as an incident to the ownership of

EASEMENT.

the plot, the right to discharge water upon an adjacent plot of land lying on the lower level. (*Fauz Ali, J.*)

EASEMENTS ACT (1882), S. 4.

Where the Government as upper riparian owner seeks to use the waters of a public stream not for a riparian

of enjoyment consistent with each other's convenience To the north of the haveli was a plot which, though

damages. The position is the same even when natural

the house which abutted on and opened on to the haveli, had a personal right of ownership in the haveli which he could exercise in respect of the haveli which had purchased and which abutted on

Held, that the original owner enjoyed no rights in the haveli and did convey none to the defendant etc., the defendant had materially and placed an additional burden on the haveli. Hence the plaintiffs were relief asked for. (*Dudhoo C. Meht*)

SALIGRAM v. BANSIRAM

11 R S 43—A I R. 1938 Sind 145

whether a prescriptive right could be acquired at all in
prescriptive right to
also very doubtful

40 P L R. 483.

—Water rights—Public stream—Government putting up dam across public river and using water not for riparian tenement but for filling tank at a distance—Nature of right—Acquisition by prescription—Extent of right—Limits enjoyment—Right of lower riparian owner to undiminished supply—Accumulation of silt over dam obstructing free flow of water—Suit by lower riparian owner—Limitation—Continuing wrong.

does cannot acquire a right of way by easement over other lands owned by his lessor. Such a lessee by reason of his being the owner of the materials of the house, would not become an owner within the meaning of S. 4 of the Easements Act, by virtue of the Explanation that 'land' includes also things permanently attached to the earth. The lessee is not in the position of an owner of immovable property under S. 12 for the purpose of a right of way. Though he may be an owner of immovable property for purpose of acquiring easements under

EASEMENTS ACT (1882), S. 7.

ELECTRICITY ACT (1910), S. 2.

movable property—

175 I O 227 = 10 R.A. 653 = 1938 A.L.R. 383 =
1938 A.W.R. (H.C.) 319 = 1938 A.L.J. 436 =
A.I.R. 1938 All. 293 (F.P.)

An easement of light and air through apertures or windows in a wall cannot be acquired by prescription,

—S. 7, III. (1)—*Right of drainage—Rights of obligations of owners of upper and lower lands—Fences*

There is a natural right of drainage from his lands to lower lands of water flowing in the usual course of nature and in undefined channels. This principle embodied in III. (1) to S. 7 of the Drainage Act. But the right of the superior land is not quite absolute. It would not follow that the right to introduce water which flows from his land to lower land to submit to an artificial right to introduce water which flows from his neighbouring lands. When land is so located that water naturally or in the course of ordinary agricultural operations descends from the estate of the superior proprietor to the inferior estate, the owner of the latter cannot do anything to prevent the water from flowing.

1938 A.W.R. (H.C.) 319 = 1938 A.L.J. 436 =
—S. 15, Expl II—*User by father of plaintiff's vendor for less than the statutory period—Son, not using for 6 years after father's death—Plaintiff's user after*

—S. 7, III. (1)—*Right to flow over higher level—Right to obstruct.*

The right of every owner of upper

acquired a right of easement for there had been an interruption, and an intention to cease to enjoy the right. *Bennet, A.C.J. and Verma, J.* FAIZULLAH EBAD-
LLAH v. BADRUZZAMAN. I.L.R. 1938 All. 840 =

178 I O 25 = 1938 A.L.R. 838 =
1938 A.W.R. (H.C.) 668 = 1938 A.L.J. 867 =
A.I.R. 1938 All. 587.

—S. 7, III. (1)—*Right to flow over higher level—Right to obstruct.*
The right of every owner of upper land to maintain dam across to tank through of channel or to
See EASEMENT—
A.R.T. W. R.R.

—S. 7, III. (1)—*Right to flow over higher level—Right to obstruct.*
made by grantor

only to reside by them would be S. 60 of the Act. (Jasmi,

the dominant herbage. As such the user of a particular

176 I O 135 = 11 R.A. 43 = 1938 A.L.R. 572 =
1938 A.T.T. 405 = 1938 A.W.R. (H.C.) 200 =

ELECTRICITY ACT (1918), S. 2.

—S. 2 (c) and R. 106—"Consumer"—*of.*

In order to hold that a person is a "consumer" defined by S. 2 (c) of the Electricity Act, it was *facte* be enough to prove either that energy was for the use of that person, or that that person owner or occupier of premises connected up licensee's electric system. If either of these that person is a consumer under R. 106 of the rule. (Rowland, J.) BHAGALPUR ELECTRIC SUPPLY CO. LTD. v. HARI PRASAD SAHA 172 I C. 940 = 4 B.R. 203 = 10 R.P. 365 = 39 Or.L.J. 206 = 18 Pat L.T. 986 = A.I.R. 1938 Pat. 15.

—S. 2 (c)—"Consumer"—*Manager of company if.* Where the registered consumer and the person supplied with the energy is the proprietor of a company, the manager of the company cannot be held to be a consumer within the meaning of S. 2 (c) of the Electricity Act. The premises of the company are not the premises

ESTOPPEL

19 Pat L.T. 343 = 1938 A.L.R. 309 = 10 R.P.O. 250 = 4 B.R. 490 = 39 Cr.L.J. 452 = 67 C.L.J. 161 = 43 Bom.L.R. 707 = 10 R.P. 365 = 39 Or.L.J. 206 = 18 Pat L.T. 986 = A.I.R. 1938 Pat. 15.

—Ss 39 and 44 (c)—*Scope and effect—Charge under—Presumption of abstraction of and tampering with meter—Conditions for raising of—Accused not proved to be consumer—Effect of.*

S. 39 of the Electricity Act dispenses with direct proof person, but does not held liable for the con- also enables a presumption, that the by registering itself has used by the consumer in

sation or rent

The Electricity Act of 1913 does not authorise a

(c) of the Act. (Dhaval, J.) BHAGALPUR ELECTRIC SUPPLY CO. LTD. v. PROFULLA KUMAR

persons or that the persons were owners or occupiers of

1938 N.I.J. 366.

ESTOPPEL. See also EVIDENCE ACT, S. 115.

Acquiescence
Appropriate and reprobate
Conduct.
Estoppel by conduct.
Judgment.
Landlord and tenant.
Point of law.

—Ss 39 and 44 (c)—*Offence falling under both sections—Charge under S. 39—Propriety.*

Where an offence falls under both Ss. 39 and 44 (c)

ESTOPPEL.

—Acquiescence—Conduct—Malabar tarwad—Acquisition by Karnavan in names of members of thavazhi—Several succeeding karnavans acquiescing and not challenging claim of thavazhi—New Karnavan claiming acquisition on behalf of tarwad after lapse of many years—Maintainability of claim. See MALABAR LAW 1937 35 77 1938

ESTOPPEL.

—Estoppel by conduct, neglect or representation—Basis of rule—Pledge of Railway receipts—Pledgee handing them over to pledger in the course of business—Repledging of them—Original pledgee, if estopped.

Though estoppel is described as a mere rule of evidence, it may have the effect of creating substantive

IN REVISION AGAINST ORDER—Competency.

It is a well known rule that a party cannot be allowed both to approbate and reprobate. If a party has adopted an order of the Court and acted under it, he cannot,

estoppel is based on the existence of duty which the person estopped owes to the person led into the wrong belief or to the general public of whom the person is one. There is a breach of duty if the party estopped has not

Held, that the revision application was incompetent and the plaintiff was not entitled to attack the order in

railway receipts from the Port Trust and storing in the bank's godowns. The bank did not put its name on the railway receipts. The merchant fraudulent bank B and A brought B raised

—Doctrine of election.

The law is sufficiently clear that a party who seeks the assistance of the Court is not entitled to approbate and reprobate or blow hot and cold. The doctrine of election is not confined to instruments one time that a transaction is some advantage to which he the footing that it is valid, and it is void for the purpose of set-off. A person who has been Court cannot subsequently (Burn. J) SREERAMULU v

Held, that the plea of estoppel could not be availed of. Bank A did not owe any duty to bank B in the matter. There was no relationship of contract or agency. There was also no representation by bank A which had

1938 M W
(1938) 2 M L J. 835

—Conduct — Reprise Declaration of final dividend—insolvency terminated a Court—Acquisition by insol later—Right the hands of INSOLVENCY

—Conduct — Tenant dispossessed by some only of under wrong section of Act—by same co sharers against latter that plaintiffs are not lity—If barred. See AGRA TENANCY ACT, 1901 AND 1938 E D. 163=1938 A W B (B.R.) 99.

—Equitable estoppel—Representation—Agreement of permanent lease by limited owner effected verbally—

1938 A L 100=10 R P O 169=1938 P. W. N 162=

ESTOPPEL.

Abdur Rahman, J.—There can be no estoppel by judgment or decree apart from the doctrine of *res judicata* unless the same matter is found to be in issue in the former trial as that now in question. Judgment was rendered on the merits and *Abdur Rahman, J.J.* *Re* KRISHNAYYA. 1

—Knowledge of execution of decree—Failure to

EVIDENCE.

—Account books—Failure to produce—If fatal. Although accounting *qua* accounting is not a part of the cause of action in a suit, omission to produce account books in such a case, though the burden were on the plaintiff to prove the facts, would be fatal. *See, J.* KALYAN J. 675-11 R N 65-2 A I.R. 1938 Nag. 254.

—Admissibility—Deposit of *vide* by A with B—

—Execution of decree—Failure to execute process—Documents were not raised in the trial Court and there

A I.R. 1938

—Landlord and tenant—Buildings by tenant—Landlord if estopped from pleading non-transferability. *See* LANDLORD AND TENANT—TRANSFERABLE TENANCY. 17 Pat 358.

—Lease—Not by all co-shares—Ejectment—Lessor if estopped—AND TENANT—LEASE. 1

—Point of law—Admissibility of nature of.

Counsel waiving objection estop his client from raising the PANNA LAL v. JAIN BANK OF 178 I.O. 288

—Suit in ejectment of Description of tenant as occupant as estoppel.

In a suit to eject a tenant as a non occupancy tenant,

—Admissibility—Statements in prior suit. In a suit the point whether plaintiff's father *is* was bandha of *J* was in question. The plaintiff produced a

1938 A.W.B. (H.C.) 533-10 R.A. 132-1938 A.I.R. 662-A.I.R. 1938 All. 443

1938 N.L.J. 181

—Point of law—Admission of counsel.

—Appraisal record—Requisites to be proved. Before a record of appraisal can be treated as in evidence it must be proved that it was made with the sanction of the *Rajast* be *danabandi* by

EVIDENCE.

Account books
Admissibility.
Age
Appraisal Record.
Certified copy.
Child witness.
Defendant as plaintiff's witness
Heading of deposition
Judgments.
Marriage
Misappreciation and Misapprehension.
Partition entries.
Proof.
Register of births and deaths.
Thak and Revenue Survey Maps.

signing the record of appraisal, or unless it is demonstrated that the *danabandi* was carried out in something of the manner of a proceeding in arbitration, the landlord is required to prove not only that the *danabandi* was made but that the estimate of outturn was correct. (*Courtney Terrell, C. J., James and Manohar Lal, J.J.*) PRATAP NARAIN JHA v. RAMA-

The doctrine of the onus of proof is merely academic where both parties give evidence. Where there is evidence on both sides, the question of onus does not arise

EVIDENCE.

all, and the Judge has to determine the issue between the parties on the evidence before him. (Worl, A. C. J.) NATHUNI SAO v. LACHMINIA

1938 P. W. N. 773.

—Certified copy—Proof—Deed.

Factorily esta-
(Fore and
HASSANBI,
L. R. N. 41=

—Child witness—Unsworn testimony—Admissibility—Oaths Act, S. 13.

In the case of an unsworn testimony of a young child, that evidence is admissible. S. 13 of the Oaths Act expressly says that for

of Headquarters for cross-examination—large.

It is not till the evidence in-chief of a witness is given that a pleader or advocate can decide what material he will use for cross-examination, and it follows that he is by no means bound to declare the names of the witnesses whose statements to the police he intends to

EVIDENCE.

calling the defendant as a witness for the plaintiff, with the usual result that important features of his case were denied by his own witness, their Lordships condemned this practice and approved of the course taken by the High Court in treating the plaintiff as a person who put the defendant forward as a witness of truth (*Sir George Rankin*). SHATRUGAN DAS V. BAWA SHAM DAS. 172 I.C. 633 = 1938 0 I.R. 42 =

172 I.C. 633=1938 OLR 42=
47 L.W. 124=1938 A.L.R. 66=4 BR. 238=
1938 A.W.R. (P.C.) 40=10 R.P.C. 152=
1938 M.W.N. 614=32 S.L.R. 308=
1938) O.W.N. 48=A.R. 1938 P.C. 59(P.C.).

—Heading of deposition—Entry in—Proof of religion

a certain person was a
ain case the person was
entry in the heading of
hat he was a Burmese

g merely in the heading
much importance could

not be attached to such entry. (*Baguley and Sharpe, JJ.*) MA TIN v. MA E NYUN 176 I.C. 242 = 11 B.B. 46 = A.I.B. 1938 Rang. 81.

—Judgments—Finding of fact in—Binding effect of.

Δημιτράκης, Γ. Η ΜΟΥΣΙΚΑ ΜΕΛΗ ΤΩΝ ΕΛΛΗΝΩΝ ΜΕΛΩΝ
1937 Ο.Ω.Ν. 1221.

¹—'apprehension'—

ind demonstrable
misappreciation
by no means so cap-
ture and Niyogi, J.J.)

2-177 I O. 605 (2) =
148-39 Cr L J. 917 =
1 I R. 1938 Nag. 394.

identitary value of—
is non-occurrence held.

ing in quita of some co sharers—Effect—Right of latter to sue in ejectment.

Entries in partition, while not constituting *res judicata*.

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e

as refused, it is propriety with from the consideration of a Court of first instance. (*Roberts, C. J. and Dunkley, J.*) **BRAHMAYA v. KING.**

A.I.R. 1938 Rang. 442.
 —Defendant as plaintiff's witness—Calling of—
 Tactics condemned.

Where the plaintiff refrained from giving evidence on his own behalf and adopted instead the tactics of

—Register of births and deaths—Entries in—Value of.

Entries of the names of persons in a register of births or deaths or marriages cannot be positive evidence of the birth, death or marriage of such persons unless their identity is fully proved. (Lord Williams, L.) HEMANTA

EVIDENCE.

KUMAR DAS v. ALIANTZ INSURANCE COMPANY.
177 I.C. 517—11 R.O. 253—
A.I.R. 1938 Cal. 120.

—That and revenue survey maps—Value of.

The Thakbust map which preceded the revenue survey was intended to guide the revenue surveyor who

EVIDENCE ACT (1872), S. 13.

the confession of a co accused. Nor can it be admitted under S. 10, because S. 10 applies to acts done in furtherance of a conspiracy or which bear some relation to the conspiracy and does not apply to a confession made after the conspiracy, and the acts done in pursuance thereof were at an end. S. 10 cannot be extended

statements of third persons or
impossibility and evidentiary
—Necessity—Nature of corro-

as for instance when

as for instance when
old in the presence of

A statement of a person believed but not proved to be dead is no doubt not admissible under S. 32 of the Evidence Act, but

under S. 8, to a list
the party. It however
contained in it (2)
ABDUL AZIZ v. S7

—Ss 8 and

Admissibility

statements of third parties made in the absence of the persons implicated

GOLOKE BEHARY LAKAL v. EMPEROR.

I.L.E. (1938) 1 Cal 280—173 I.C. 65—

10 R.O. 441—39 Cr.L.J. 161—

—C.L.J. 225—42 C.W.N. 129—

A.I.R. 1938 Cal 51

—S. 8, illus. (j) and (k)—Accusation by woman against man for attempt to ravish—Statements by her to witnesses—

A woman being
man alleging to
considered the
witnesses after
of attempt.
the woman was
kept silent and

make statements.

—S. 10—Statements by deceased in dying declaration as to conspiracy—Admissibility and value of—Corroboration.

WOMAN
WAS TO

EMPEROR.

175 I.C. 99—39 Cr.L.J. 545—
10 R.O. 282—A.I.R. 1938 Sind 94.

EVIDENCE ACT (1872), S. 26.

Mehta and Lobo, A. J. (s.) BACHOO KANDERO v. EMPEROR. 32 S.L.R. 185=172 I.O. 968=10 E.S. 188=39 Cr.L.J. 239=A.I.B. 1938 Sind 1.

—S. 26—Applicability—Illegal arrest by police-officer—Confession by arrested person while in custody of arresting officer—Admissibility.

S. 26 of the Evidence Act is not inapplicable in cases where the arrest by the police officer of person making the confession is illegal. Whether the arrest is legal or illegal the mischief which the section is intended to avert remains all the same, and a confession made by the arrested person while in the custody of the police-officer is inadmissible under S. 26. The illegality of the arrest does not affect the operation of S. 26 (*Dhavit and S.C. Chatterji, J.*) EMPEROR v. MUSSAMMAT JAGIA.

17 Pat. 369=174 I.O. 521=10 R.D. 531=39 Cr.L.J. 428=4 B.R. 451=1938 P.W.N. 293=19 Pat.L.T. 268=A.I.R. 1938 Pat. 308.

—S. 26—“Custody of a police-officer”—Meaning of—Police-officer arresting accused and leaving him in charge of private individual during temporary absence—Accused, if in custody of police-officer.

The “custody” of a police-officer for purposes of S. 26, Evidence Act is not mere physical custody. A person may be in the custody of a police-officer, though the latter may not be physically in possession of the person of the accused making the confession. Once an accused person is arrested by a police officer and is in his custody, the mere fact that for some purpose or other the police-officer happens to be temporarily absent and during such absence leaves the accused in charge of a private individual, does not terminate the custody of the police-officer. The accused must be deemed to be still in the custody of the police-officer. (*Dhavit and S.C. Chatterji, J.*) F.

39

—Police-officer.

A village chowkidar is a police-officer meaning of S. 26 of the Evidence Act, though not be one within the meaning of the Cr. respect of the powers to be exercised by a po for purposes of that Code (*Dhavit and S.C. Chatterji, J.*) EMPEROR v. MUSSAMMAT JAGIA.

17 Pat. 369=174 I.O. 521=10 R.P. 531=39 Cr.L.J.

—S. 27—Person in police.

Statement by.

S. 27 of the Evidence Act is no doubt restricted to persons in custody of police; but there is no reason why it should not apply also to persons who are in actual police custody although that custody has been ordered by a Magistrate. There is nothing in such a case to offend against the principle of S. 27, namely, that portions of a confession made to the police leading to the actual discovery of facts can safely be proved (*Rowland and Madan, J.*) RAM BABU JADAV v. EMPEROR.

173 I.L.J. 418=4 B.R. 266=10 R.P. 402=39 Cr.L.J. 302=18 Pat.L.T. 964=A.I.R. 1938 Pat. 60.

—S. 27—Applicability—Information leading to discovery of acts really given by person other than accused—Subsequent statement by accused and actual discovery by him—Relevancy.

Where the discovery of facts is in consequence of information given not by the accused by other persons than the accused, and a very slight trouble would suffice

EVIDENCE ACT (1872), S. 30.

to discover those facts without any intervention whatever by the accused, anything which the accused might say in the matter is not admissible in evidence. The fact that the actual discovery is done by the accused is immaterial so long as the real information which leads to the discovery comes from a person other than the accused. (*King and Lakshmana Rao, J.*) VENKADU v. EMPEROR.

1938 M.W.N. 1272.

—S. 27—Statement leading to discovery of facts—What amounts to—Police officer already aware of what accused would say but procuring witness and then taking statement—Propriety—Admissibility of such statement.

Under S. 27 of the Evidence Act, it is only when the information given by a person in custody leads to the discovery of any fact that such information would be admissible. Where the police officer knows beforehand precisely what the accused is going to say, and procures the presence of witness to witness the making of the statement of the accused and then the accused is brought out of custody and makes a statement and afterwards certain facts are discovered, it cannot be said that anything is discovered in consequence of the statement made by the accused to the police officer in the presence of the witnesses. This is mere farce and this manner of manufacturing evidence ought to be deprecated. S. 27 of the Evidence Act is not designed by the Legislature to encourage proceedings of this sort. (*Burn and Lakshmana Rao, J.*) PUBLIC PROSECUTOR v. SUBBA REDDI.

1938 M.W.N. 1118=48 I.W. 780.

—S. 29—Scope—If controlled by S. 164, Cr. P. Code—Record of confession as dying declaration without due warning being administered—Admissibility. See Cr. P. CODE, S. 164.

1937 M.W.N. 1325.

30—Confession of accused—Conditions of ad.

f the Evidence Act requires that the confession made should be one affecting its maker, that incriminate its maker or it is of no value co-accused; but the law does not go so far as

—S. 30—Confession of accused—If evidence against other accused.

accused can only be taken as other accused under S. 30 which confession cannot take into evidence, against the

GOUNDAN v. E.
39 Cr.L.J. 311

—S. 30—Confession of co-accused—Evidentiary value.

It is not quite clear as to what is the exact meaning of “tainted evidence”; whether it means that the person giving the evidence is tainted morally; or whether it means merely that he is a person on whose word reliance cannot be placed. As regards an approver, there is the fear that he is giving evidence in order to save his skin and therefore that he is liable to make statements which are not true if he thinks they will be for his benefit. But as regards the confession of a co-accused, one cannot call this, tainted evidence, for the same reason. A person making a confession does so deliberately and after having been warned solemnly by the Magistrate of the consequences of making a confession and knowledge that he may be convicted thereon.

EVIDENCE ACT (1872), S. 30.

if he still persists in his purpose and makes a confession, the statements that he has made are tainted statement because he is an criminal offence, sarily and always that because the must be believed. In such case it has to be considered whether the confession is a true one, whether there are any circumstances which suggest that it is false or that some of the statements made therein are also false. The Court may take the confession of a co accused person into consideration against the other co-accused; that is to say, the Court can only treat a confession as lending assurance to other evidence against a co-accused (*Mackey, J.*) **NGA MYA v EMPEROR.**

1938 Rang L.R. 30—174 I.O. 947—
39 Cr.L.J. 481—10 R.R. 419—A.I.R. 1938 Rang. 92

—S. 30—Confession of accused—Sufficiency to base conviction—Corroboration—Nature and extent of.

—S. 30—Co
sibility. See EVIDENCE ACT, S. 10,
A.I.R. 1938 Sind 94.

—S. 30—Joint trial of two persons, one for rape and other for abduction—Confession of one—If admissible against other.

When two persons are jointly tried, one for the offence of rape of a girl and the other for the abduction of that girl, they are not tried for the same offence. Consequently a confession made by himself and the other is not against the other under S. 30 (*Derbyshire, C.J.* and *Mukh CHANDRA v EMPEROR.*)

39 Cr.L.J.
42 C.W.N. 814—

—S. 30—Retracted confession—Corroboration

A retracted confession of a co-accused in evidence against his co-accused is to seek corroboration based on it. What the nature of the evidence should be will depend on the facts of the case (*Varma and Rowland, MANGRU KISAN.*) 11 Pat 612—10 Pat L.T. 104—1938 P.W.N. 25—4 R.R. 284—173 I.O. 507—

39 Cr.L.J. 325—10 R.P. 418—A.I.R. 1938 Pat. 108.

—S. 30—Retracted confession—Value of, against co-accused.

A retracted confession may be valuable evidence against the accused making the confession, but it has very little value against a co-accused. (*J.*) **SINGHA v. EMPEROR.**

39 Cr.L.J. 49—
40 P.L.R. 58—A.I.R. 1938 Lah. 252.

—S. 30—Retracted exculpatory confession—Admissibility against co-accused.

EVIDENCE ACT (1872), S. 32

A confession by an accused of an exculpatory nature

—S. 31—Admissions by party—How far binding.

An admission made by a party is not binding on him and its only effect is to shift the burden of proof against him. He is at liberty to prove that his admission was mistaken or untrue and is not estopped or concluded by it unless another person has been induced by it to alter his condition. (*S.K. Ghose and Patterson, J.J.*) **BROJENDRA MOHAN MOITRA v. MAHARAJA SRISH CHANDRA NANDI.** 67 C.L.J. 495.

—S. 31—Admissions—Value—Bona fide mistake—Correction—Permissibility.

Admissions are not conclusive proof, and though they may be corrected, it is not a matter of course.

S. 8 AND 32. 40 P.L.R. J., and K. 1.

32—Dying declaration—Gunshots in all

the declaration, in the liver, the haemorrhage deal of shock becomes uncon- of making any

dying declaration. (*Young, C.J.* and *Monro, J.*) **ANANT RAM MAYA RAM v EMPEROR.**

174 I.O. 989—10 R.L. 655—39 Cr.L.J. 512—
A.I.R. 1938 Lah. 262.

—S. 32—Dying declaration—Wound puncturing liver, lung and stomach—Capacity of victim to make declaration.

Where a deceased received a spear wound which penetrated the chest wall, the victim was capable of making a dying declaration.

—S. 32—Oral evidence of verbal statements—Admissibility—Witness interested in result of litigation

S. 32 of the Evidence Act speaks of statements both written and verbal, and a Court cannot refuse to admit oral evidence of a verbal statement which fulfils the conditions of the section.

42 C.W.N. 359.
—S. 32—Statement by murdered person about motive for murder—Evidence of—Admissibility.

EVIDENCE ACT (1872), S. 32.

Statements made by a murdered person prior to the murder as to the facts of the murder, the manner of falling under such statement the motive for the murder.

177

—S 32 (1)—*Applicability—Admission of dying declaration—Method of proof.*

The dying declarations of a deceased person are admissible under S 32 (1) of the Evidence Act. The

evidence by heart before he enters the witnessbox or no dying declaration could be proved in a satisfactory manner at all. (*Almond, J. C. and Mr Ahmad, J.*)

HAJIF GUL v. EMPEROR.

176 I.C. 471—11 R. Pesh. 9—39 Cr.L.J. 744—A.I.R. 1938 Pesh. 33.

—S 32(1)—*Dying declaration—Conviction if can be based on.*

It is of course a fact that for an accused person to be

ment, made as a rule in the absence of the accused with

speaking, on being questioned regarding a dying declaration by signs of the person recording the dying declaration that the same may be admissible to record the precise nature of the signs person is stated to have made. It is not his function to record merely his interpretation of the signs, which should be left to the tribunal. (*Courtney Terrell, C. J. and Alankar Lal, J.*)

DARPAN POTDARIN v. EMPEROR.

175 I.C. 833—4 R. 342—1938 P.W.N. 266—10 R.P. 456—39 Cr.L.J. 384—A.I.R. 1938 Pat. 153.

EVIDENCE ACT (1872), S. 32.

—S. 32 (1)—*Dying declaration—Value—Preference.*

1938 A. Cr. O. 143—1938 O.A. 924—1938 A.W.R. (O.C.) 103.

—S 32 (1)—*Statements long prior to death—Ad-*

—S 32 (3)—*Part of statement against pecuniary interest—Entire statement, if admissible.*

Where a part of a statement is against the pecuniary or proprietary interest of the person making it within the meaning of S 32 (3) of the Evidence Act, and the rest of the statement is necessary to explain the part which is against interest, the statement as a whole would be admissible. Where during a quarrel between

he proprietary or proprietary interest of the person making it within the meaning of S 32 (3) of the Evidence Act, and the rest of the statement is necessary to explain the part which is against interest, the statement as a whole would be admissible. Where during a quarrel between

on the statement of the Evidence Act, (b) that the person in dispute is RAM RAJ L. (H.O.) 776. and as to events

a relationship it relates to. (Samp, N. 1 R.L. 220—1938 Lah 303. utility—Condi-

vidence under

—Ss. 32 (5) and (6)—*Pedigree—Admissibility—Conditions of.*

Before a pedigree or table of relationship can be admitted in evidence, it must be shown that it is a statement made by a person having special means of knowledge and made before the question in dispute had arisen. (*Abdul Ghani and Singaravelu Mudaliar, J.J.*)

EVIDENCE ACT (1872), S. 32.

NANJUNDEGOWDA v. MUDDAPPA

16 Mys.L.J. 137=

—S. 32 (6)—"Peculiar"—*Me*

As ordinarily understood, a pe

family record handed down from generation to generation

J.J.)

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The term "representatives in interest" in the proviso to S. 33 of the Evidence Act would have derived title from another. It, persons having the same interest in the litigation and comprises all persons on whose behalf, though not in their names or as representing them, the previous litigation was carried on. In other words, all persons whose rights are litigated *bona fide* by a person virtually on behalf of a class, though they themselves are not *co nomine*s on the record, will be considered in

ter is to keep a fairly full record of the person whose

—S. 36—Revenue Maps and surveys—Evidentiary Value.

Maps and surveys made in India for revenue purposes are official documents prepared by competent persons, and with such publicity and notice to persons interested

A.I.R. 1938 All. 242.

—S. 36—Thak map—Evidentiary value

relevant, but they are not by themselves sufficient evidence in charge any person with liability. It is the obvious duty of the person relying on such entries to produce corroborative evidence in support of such entries. Any relevant fact which can be treated as evidence within the meaning of the Act would be sufficient corroborative evidence furnished by the entries in books of account if true. (*Ismail, J.*) NARAIN DAS v. GHAZI RAM GOJAR MAL.

The Thak map is evidence of possession at the time when it is made and as such evidence of title. (*Syad Nasim Ali and Henderson, J.J.*) SITANATH SAHA v. MANORANJAN ROY. 68 O.L.J. 293.

—S. 41—Construction and scope—Judgment in rem—Meaning and effect of—"Competent Court"—If excludes foreign Court—Foreign judgment as to validity of will—If conclusive against legatees in British

—Acknowledgment of legitimacy.

When a man acknowledges a child born out of wedlock, such judgment is treated by the

Legal Committee—Admissibility.

The question of Shari and others of the legal Committee—Admissibility.

question as to its own law and in a matter upon which it upon to adjudicate, the judgment of a foreign there is no rule of international law which British Indian Court to accept the judgment Supreme Court of His Britannic Majesty. As a domestic law of British India, as a Hindu court

official duties. Such documents are, therefore, admissible in evidence, although no presumption of correctness

EVIDENCE ACT (1872), S. 42.

limits of that Court's jurisdiction. S. 41 of the Evidence Act cannot be read international law as clearly deals with what though that expressive words "competent of any country which is *rem.*" The Alexandria Court is competent to pass a judgment on the assets of a deceased person who at the time happened to be in Alexandria. The scope of the Alexandria Court can have *rem.* "Court" in S. 41, is British India. A foreign Court has no operation of S. 41. Nor can a judgment *inter partes* be made on persons who have not been parties to the suit in that foreign Court. The question as to the validity of the will made by the deceased decided by the Alexandria Court in the suit to which the executors alone were parties can be agitated by the legatees in a suit in British India, when the legatees have not been parties to the foreign suit. Nor can the executors whose title was successfully challenged by a legatee in that suit be said to have properly represented the testator in the suit in British India.

A matter which need not have been put in issue which was not material or which was not in question or which was only a question of fact. The only judgment *in rem* as to the validity of the will pronounced not only at the domicile but by the Court of do J. and Wadia, J.) MESSA v. M.

I.L.R. 1938 Bom. 529-177 I.O. 838-11 K.H. 121-40 Bom.L.R. 571-A.I.R. 1938 Bom. 394.

—S. 42—Decision as to custom—Relevancy—Value. See EVIDENCE ACT, S. 13.

40 P.L.R. 29

—S. 47—Scope—Statement by witness that certain document is in handwriting of known person—Admissibility and value of—Document not before Court—Effect—Witness—If must state source of knowledge at trial.

In the first instance that he knows the handwriting. It is the duty of the opposite party to explore in cross-examination the sources of his knowledge, if he is not satisfied with the testimony of the witness as it stands. Nor would the fact that the document is not before the Court render such evidence inadmissible. (James, J.) JAGDISH DAS v. EMPEROR.

proved
ability to prove original.

A copy of a copy, in the absence of proof of comparison with the original is not good secondary evidence of the original, and is not good evidence of the original

EVIDENCE ACT (1872), S. 74.

A.I.R. 1938 Cal 702.
Scope of—If state the English law on—Proof of execution witness—If to be called before

It is not the law that a plaintiff in a suit on a mortgage bond should call all the attesting witnesses to the bond who are alive before he can take advantage of S. 71 of the Evidence Act. It is incumbent on the plaintiff to call at least one witness, and if that witness denies or does not recollect the execution of the document, then the execution may be proved *aliunde*. What ever the English law may be Ss. 68 to 71 of the

sion made for the purpose of, or having reference to the suit, and made either in the pleadings or during the course of the trial, and not an admission antecedent to the suit made in some other transaction of the party. (Pandurang Row and Venkataramana Rao, J.J.) SHEIK DAWOOD ROWTHOR v. RAMANATHAN CHETTIAR.

1938 M.W.N. 1203.
—S. 73—Comparison of signatures—Expert evidence—If necessary—Power of Court to form opinion

the Court is entitled to form its own opinion after comparing the signatures on the documents produced in Court and the admitted signatures. Such procedure is expressly contemplated by S. 73 of the Evidence Act, (Courtney-Terrell, C.J. and Manohar Lal, J.) NARAYANASWAMY v. EMPEROR.

17 Pat 15-1938 P.W.N. 338-III Pat L.T. 432.

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EVIDENCE ACT (1872), S. 74.

—S. 74—“Public document”—*Finger print slip—Extract from jail register—List of previous convictions—Admissibility to prove earlier convictions—Identity of accused with previously convicted person—Proof.*

A finger print slip taken in pursuance of a statutory duty cast upon police officers after a convict enters the jail is an act of the executive under S. 74 of the Evidence Act and is therefore a public document. S. 74 also the jail register which is written by the authorities in the ordinary course of duty as a convict is admitted into jail is a public document.

—S. 74—“Public document”—*Finger print slip—Extract from jail register—List of previous convictions—Admissibility to prove earlier convictions—Identity of accused with previously convicted person—Proof.*

impressions taken. But where the finger prints were taken elsewhere or taken in a place not the place of conviction, and taken sometime after the conviction, it cannot be said that the identity of the convicted person with the accused before the Court.

A calendar extract showing previous convictions of the convicted person in the accused before the Court. But the list of previous convictions contained in the finger print slips cannot be said to be satisfactory evidence of the previous convictions recited therein. (*Herwall, J.*) ARUMUGAN v. EMPEROR 1938 M W N 595 =

48 L W. 839—A.I.R. 1938 Mad. 358.

—S. 76—*Copy of talukdhari Sanad not sealed—*

of India is authorised by law to do so. But if there is no evidence to the contrary, the Court cannot make such a finding when other necessary formalities have been observed. Accordingly a copy of a sanad or other document is not sealed or otherwise certified and is admissible in evidence. (*Zia ul-Haqq and Hamilton, J.J.*) SRI RAM v. MAHONED

EVIDENCE ACT (1872), S. 80.

ed that the entry was made in ordinary bahi and not on stamped paper though required by law as such. Moreover there was no evidence by plaintiff to show that the defendant was in possession of the bahi and was withholding it though called upon to produce it.

Held, that no presumption under S. 89 could be drawn under the circumstances and as the entry was made in the ordinary bahi and not on stamped paper.

Nature of presumption raised.

The circumstances that a document purporting to have been signed by a certain person is among official records is no proof that the document is 30 years old and

draw.

The presumption under S. 90 of the Evidence Act is not one which the Court must draw. The Court has a discretion in the matter. (*Bennet and Ganga Nath, J.J.*) JALESHWARI PRATAP NARAIN SINGH v. PATESHWARI BAKSH SINGH.

175 I C 594—10 B A. 705—1988 A L R 456 =

1938 A W R. (H C) 284—A.I.R. 1938 All. 345.

—S. 90—*Presumption under—Discretion of Court.*

—S. 90—*Presumption under—When to be raised—Discretion and duty of Court in raising.*

EVIDENCE ACT (1872), S. 91.

duced from proper custody. (*Wassooden and Thakor, J.J.*) **RUDRAGOUDA v. BASANGOUDA.**

175 I.C. 361 = 10 E.B. 538 =

40 Bom.L.R. 202 = A.I.R. 1938 Bom. 257.

—S 91—Applicability—Suit for redemption of mortgage and possession—Mortgage for over Rs. 100 not registered—Oral evidence—Admissibility—

does not prevent the revocation of an unregistered document. (*Wadga*
YOUNG—

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—S. 91—Partition—Unregistered deed—Other evidence, if inadmissible.

Where an unregistered partition deed is relied upon by the defence in a partition action, though the deed may be inadmissible in evidence, being unregistered

ISMAIL
No. 1080.

fact is a term of the contract, and the fact that there is a loan can never be a term of the contract contained in the

ment or if the note does not embody contract the true nature of the transaction. But if the promissory note embodies the contract, no suit on the debt will lie as S. 91 of

EVIDENCE ACT (1872), S. 92.

the Evidence Act and S. 35 of the Stamp Act bar the way. The fact that the execution of the promissory note is contemporaneous with the borrowing cannot, however, exclude the possibility of the instrument being paid.

on—Unregistered
to prove title—

—Ss 91 and 92—Scope and effect of—Oral evidence that document not intended to be acted upon—Admissibility.

S 91 of the Evidence Act only excludes oral evidence as to the terms of a written contract. S. 92 only excludes oral evidence to vary the terms of the written contract, and has no reference to the question whether terms set forth in an action to

—S 92—Applicability—Pre-emption suits. See
PRE-EMPTION—CIRCUMVENTION OF

depends on the
was executed.

for a document could always be adduced under proviso (1) of S. 92, even if the document had mentioned any

—Ss 92 and 94—Intention of parties—Oral evidence—Admissibility—Conditions.

EVIDENCE ACT (1872), S. 92.

Where the surrounding circumstances are not so compelling as to lead inevitably to the conclusion that there had been an inadvertent misdescription of property in a mortgage deed in suit and that the property which was intended to be mortgaged was something over and above what was actually described and specified in the document, the mortgagees are barred by the provisions of Ss. 92 and 94 of the Evidence Act from showing that the intention of the parties

appears from the terms

(*Collister and Baile*)

SHUJAAT-MAND KHA

1938 A.L.J. 47

176 I.C. 81-1

—S. 92—Mistake

sanctions admission of

SURETY BOND—CORR

A.J.E. 1938 Nag. 259.

—S. 92—Partition—Oral evidence—Admissibility

—Test—Receipts referring to partition 'lots'.

It is perhaps a moot point whether oral evidence is

EVIDENCE ACT (1872), S. 93

property is to pass are ambiguous, then recourse may be had to external evidence with a view to determining what the intention of the parties was, but if the intention of the parties has been stated in unambiguous terms, then the terms must remain the sole criterion of the intention of the parties, and evidence cannot be introduced for the purpose of showing that the contract

duced to writ-

missibility.

uced to writing

its terms could

Act. (*Boor*,

18 N.L.J. 125.

ling two halves

of land at certain rate—Separate oral agreement that one of them was given rent free—Admissibility.

Where under a *Kabuliyat* two halves of land were settled with a tenant at a certain rate, a separate oral agreement that one of the halves should be

—S. 92—Mistake

All that S. 92 of the Evidence Act excludes is oral evidence to contradict, vary, add to or subtract from the terms of a contract which has been reduced to writing.

—S. 92, Proviso 3—Promissory note payable on demand—Collateral oral agreement not to make demand until certain condition is fulfilled—Admissibility.

consideration is on the other hand a matter of fact and not a matter of contract, and the recital of this fact is different from the former contractual part as to the passing of the property. S. 92 will not prevent a party from disputing the recitals in the sale deed. If the terms of the contract as to when the

different deeds are one and same transaction—Admissibility.

Where two deeds on their face appear to be separate transactions, another agreement which was not evidenced by any writing cannot be proved to show that the though apparently two separate transactions,

EVIDENCE ACT (1872), S. 106.

agreed to be treated as one. (*Wort and Varma*
DEONANDAN TEWARY v. DRAUPADI KUEK.

175 I.C. 831—4 B.R. 632—11 R.P.

A.I.R. 1938 Pat

—S. 106—Question whether plaintiff is authorized to represent institution in suit—Proof of the minutes of the meeting of Managing Committee—If sufficient to discharge burden

Where the question is whether plaintiff is authorized by the Managing Committee of an institution to bring a suit on its behalf, and the proof of the meeting of the Managing Committee is sufficient to discharge the burden of proof, the plaintiff is authorized to represent the institution in suit.

1938 O.W.N. 239—1938 A.L.J. 194—
 1938 O.W.N. 245—1938 M.L.R. 104—
 1938 A.L.R. 138—1938 A.W.R. (P.C.) 74—
 40 M.L.R. 247—4 B.R. 317—56 C.L.J. 523—
 10 R.P.C. 202—1938 O.A. 371—42 C.W.N. 930—
 1938 M.W.N. 621—1938 P.W.N. 849—
 40 Bom.L.R. 724—A.I.R. 1938 Pat

(1938) 1 M.L.

—S. 108—Date of death—Presumption as to

There is no presumption under S. 108, Evidence Act, that a person who has not been heard of for a period of more than seven years died at the end of the first seven years or at any particular date. (*Barlet and Macklin, J.*) VITHABAI v. MALHA

I.L.R. (1938) Bom. 155—175 I.C. 190—

10 R.B. 524—40 Bom.L.R. 147—

A.I.R. 1938 Bom. 223.

—S. 109—Tenant admitting tenancy—Presumption of its continuance

Where a tenant at will admits the tenancy, S. 109 comes into operation and there is a presumption against him that he continues as a tenant.

—S. 110—Onus under—When discharged.

The onus laid on a party by S. 110 of the Evidence Act is discharged by his showing that the property is enjoyed by the other party rests on a basis with a right of property. (*Lord Norm.*)

DISTRICT LOCAL BOARD, AHMEDABAD

TARY OF STATE 32 S.L.R. 340—1938 A.

10 R.P.C. 186—4 B.R. 295—172

1938 O.A. 78—1938 O.L.R. 83—1938 P.

A.I.R. 1938 Pat

—S. 111—Applicability—Bona fides—Of a transaction not disputed but only its nature.

any particular transaction, but is one as to the nature of the transaction itself. When a question is entirely outside one of good faith and the transaction is impugned from another angle altogether, merely because a sale takes place.

—S. 114, III. (a)—Interval between commission of offence and recovery of property stolen or robbed—Presumption of receipt of stolen property—If justified—Duty of Judge to direct jury to consider interval—Accused absconding knowing of search—If justified presumption.

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EVIDENCE ACT (1872), S. 114.

order to catch them in the act of committing crime—Evidence of—Corroboration—Necessity.

Even where the object of the persons who instigate another to commit a crime is to catch him in the act of committing the crime, *e.g.*, police decoys, the instigation amounts to an abetment of the offence, and the abettors must be regarded as accomplices when the object of the instigation is to make the offender commit the crime and the person who is instigated actually commits the offence.

EVIDENCE ACT (1872), S. 114.

and A.I.R. 1937 Rang. 209 Overr. (*Roberts, C. J. Baguley, Mosely, Ba U, Dunkley, Braund and Shaw, JJ.*) THE KING v. NGA MYO

1938 Rang L.R. 190=175 I.C. 465=10 R.R. 494=39 Cr L.J. 581=A.I.R. 1938 Rang. 177 (F.B.).

—S. 114, III (b)—Approver or accomplice—Need for corroboration.

Whether a witness is stigmatized as an approver or as an accomplice, he is as regards the matter of corroboration on the same footing. (*Casella, J.*) PURNANANDA DAS GUPTA v. 68 O.L.J. 206.

(b)—Evidence of accomplice—

1st in cases where the a "decoy" is

corroboration.

A witness is none the less an accomplice even though he has already been convicted on his account. Where one of the accused who pleads guilty and implicates the

convict upon the uncorroborated testimony of an accomplice alone, although it is not illegal to do so. The Court should therefore regard an accomplice as *prima facie* unworthy of credit, but this presumption

(*Abdul Ghani, J.*) NARASIMHAIAH v. GOVERNMENT OF MYSORE. 16 Mys L.J. 147

—S. 114 III. (b)—Accomplice—Evidence of—Corroboration by another accomplice—Sufficiency.

It cannot be laid down absolutely that corroboration of one accomplice by another accomplice is not corroboration.

1938 Rang L.R. 190=

A.I.R. 1938 Rang. 177 (F.B.).

—Ss. 114 (b) and 133—Accomplice evidence—Value—Independent corroboration—Necessity—Conviction, if can be based upon.

Under S. 114 (b) of the Evidence Act a Court may

corroboration.

acting in collusion with one another, the cumulative effect of the evidence of two or more of them may be sufficient to remove the *prima facie* presumption of the individual unworthiness of credit of their statements, and if this be the case a conviction may legitimately be

such cases, S. 133 of the Evidence Act makes it clear illegal merely because it is based

ated testimony of an accomplice.

(*J.J.*) SURAJPAL SINGH v. EM-

III Nag 616=1938 N.L.J. 185=

11 R.N. III=39 Cr L.J. 818=

A.I.R. 1938 Nag. 328.

—S. 114, III (b)—Evidence of approver—Approver—Proper method.

Where a charge of conspiracy depends upon the evidence of an approver, the judge should make up his

extraneous to the person whose testimony it is sought to corroborate. But it may consist of extraneous proof of a fact relating to that very person's prior conduct. The above conclusions apply to approvers also. 9 Rang. 404

corroboration required—Statement of accused connecting him with crime—If sufficient corroboration

Corroborative evidence tending to connect the accused with the crime described by an approver does not need

EVIDENCE ACT (1872), S. 115

by sale of holding—Plea of non-transferability of tenure—If open in execution.

It is not open to a tenure holder judgment-debtor, who has obtained advances on mortgages of his holdings on the representation that he was in enjoyment of a transferable interest in land, to object to a sale

purchaser. That is a matter between the landlord (*Courtnay Terre*)
SOMAR RAM v. BUDHU RAM

175 I.D. 482=1938 P.W.
10 E.P. 630=

—S. 115—Representation permanent lease by Mohant of Salami and building pucca structure—Tenant not getting agreement specifically enforced or taking registered lease—Suit to eject by succeeding Mohant—Estoppel. See T.P. ACT, S. 107 1938 P.W.N. 386

—S. 115—Representation—Plea of estoppel—Fraud, if necessary

It is not necessary for the purpose of fraud or deception should be pleaded that any representation was intentional. Party and it was acted upon by the rule of estoppel will apply. (*Shide*,
SHAH v. MAHOMED YAQUB. 40 P.L.R. 848=

178 I.C. 436=A.I.R. 1938 Lah. 558.

EVIDENCE ACT (1872), S. 123.

tenancy is not continuing, the statutory estoppel comes to an end (*Stone, C. J. and Bose, J.*) ABDUL RAZAK v. SETH NANDLAL.

1938 N.L.J. 317=

A.I.R. 1937 Nag. 506.

—S. 116—Applicability—Tenant already in possession.

A.I.R. 1938 Pesh. 49.

—S. 116—Denial of lessor's title—When permissible.

A tenant is not estopped merely because by the tenancy he acknowledges the title of his landlord, and a tenant may always explain and thereby render inconclu-

—S. 116—Lessee not induced on land by lessor—

42 C.W.N. 1032.

—S. 116—Scope and effect of—Expiry of period fixed in lease—Estoppel against tenant if continues thereafter—Tenant neither paying rent nor accepting title of landlord since—Absence of evidence of landlords assent to tenant's possession—Suit for possession more than 12 years after expiry of lease—Maintainability—

tenant from
continuance of
in a lease,

(*Zia ul-Haqq*)
RAM SINGH.
1938 O.L.

—S. 115

The law of
enacts is the
MERCANTILE
INDIA.

19 Pa.

created or arose after such date. (*Howell, J.*)
HARAMIAH v. RAMASWAMY. 176 I.C. 84=

11 E.M.L. 30=46 L.W. 848=A.I.R. 1938 Mad. 73.

—Ss. 123, 124, and 162—Privilege—State act a party—Rules governing production of documents.

Once the tenancy is at an end there is nothing for S. 116 of the Evidence Act to fasten on to when the

EVIDENCE ACT (1872), S. 133.

Where the state is not a party govern the question of production of privilege, etc.—(1) All documents produced. (2) In case of state documents the privilege should be claimed by the witness who is summoned to produce them. (3) When objection is taken the Court cannot inspect the document but can take other evidence to determine its nature. (4) Ordinarily it is enough if the head of the department is the head of the department. (5) but may require further evidence.

(Dube, J.) BHAIYA SAHEB v. KANNIAH.

A I.R. 1938 Nag. 358.

—S. 133—Approver—Corroboration—Nature of evidence necessary.

An approver's statement must be regarded with suspicion and cannot be accepted without material corroboration. The prosecution's substantial evidence to corroborate approver that he took part in offence, but also that the other accused took part with him. (Weston.) GANESH v. EMPEROR.

1937 A.M.L.J. 123.

—S. 133—Uncorroborated evidence of approver—Conviction, if can be based on—Discretion of Court.

S. 133 of the Evidence Act gives the court a discretion to base a conviction solely on the uncorroborated evidence of an approver. Such a conviction is not illegal. (Baguley, J.) NGA MYO v. THE KING.

1938 Rang.L.R. 213

—S. 145—Compliance with—Sufficiency.

Where the whole of the previous statement made by the witness is read out to him and he is cross-examined in respect of it but he gives evasive replies, S. 145 of the Evidence Act is fully complied with, although the witness is not cross-examined in respect of the statement.

to contradict evidence of witness officer.

(1938) M.L.J. 618.

—S. 145—Witness sought to be contradicted in cross examination by his statement to police—Cross-examination subject to subsequent proof of statement—Permissibility.

Where a witness is sought to be contradicted by a statement made by him to the police, it is not necessary to prove that the statement was made to the police.

—S. 157—Construction—'Former statement'—Meaning of.

The words 'former statement' in S. 157 of the Evidence Act mean a previous statement of the witness who is to be corroborated made on another occasion, (i.e.) an

EXECUTION.

subsequent state—(S.N. Guha and MANDAL v. EM. 16 = 10 B.C. 607 = 39 Cr.L.J. 395 = A.I.R. 1938 Cal. 125.

—S. 157—Reference by witness to deed to which he was not party—Permissibility.

In a suit for possession of certain shop one G, who

not a party, i.e., to statements which he did not make as corroborative evidence under S. 157, (Skemp, J.) KHEMAN v. CHHOTU. 40 F.L.R. 988 =

A.I.R. 1938 Lah. 635.

—S. 160—Witness not recollecting facts nor stating that he had reported facts correctly—Evidence of such

is made by a witness in state of mind, what the accused in the case was alleged to have said, nor does he state before the Court, that although he has no specific recollection of the facts themselves, he was sure that the facts were correctly reported by him in his report, the evidence of such witness is inadmissible in evidence. (Blacker, J.) PINDI DAS v. EMPEROR. 40 F.L.R. 872 = 177 I.C. 707 = 11 B.L.R. 357 = 39 Cr.L.J. 930 =

A.I.R. 1938 Lah. 629.

—S. 162—Privilege—State document—Test.

Police during an investigation seized account books of a certain person and made copies of it in their diary. In a later civil suit that person denied that he kept accounts and hence the other party called for the copies of the account books made by the police to be produced in evidence. Police refused to produce the copies claim-

State documents—important—course of a police investigation. Neither the police nor any other rules of disclosure by the matter for which no privilege otherwise privileged documents. SAHEB v. RAMNATH. A.I.R. 1938 Nag. 358.

Immunisation of evidence—Duty of Court—Conviction on the remaining evidence.

Where there has been an improper admission of evidence, a Judge would be acting correctly under S. 167 of the Evidence Act, if he comes to the conclusion that the rest of the evidence is sufficient to justify the conviction. (Gruer, J.) JAMINA PRASAD v. EMPEROR. 39 Cr.L.J. 427 (2) = 174 I.C. 523 =

10 B.N. 417 = A.I.R. 1938 Nag. 325

EXECUTION.

See also C.P.C., S. 47 AND O. 21.

Amendment of application.
Attachment.
Compromise.
Delivery of possession.
Executing Court—Powers.
Jurisdiction.
Minor.
Revival.
Right of true owner to execute.
Sale.
Withdrawal.

EXECUTION.

—Amendment—Defective application for execution

terms of tenancy.

judgment-debtor. He is just as much bound by his equities as was his judgment debtor and it matters not

—Compromise—Executing Court—Duty to record.

The executing Court is bound to record a compromise between the parties and the compromise extinguishes the intent to extinguish the question as to whether or not to record it (*Dalip Singh Chand v. Des Raj*)

—Delivery of possession of judgment-debtor possession and symbolical

—Delivery by proclamation—Effect of.

The delivery of possession by proclamation is not sufficient

in the Code of Civil Procedure. But the mode of delivery will vary naturally according to the nature of the property delivered. In case of property in actual physical occupation of the judgment-debtor, the mode of delivery which he actually res by being bodily removed or purchaser must. If the property is rights in direct possession judgment debtor cannot though delivery would

EXECUTION.

object to final decree and to execution therefore—Sub-

revealing the truth, however cleverly hidden by false or

can be raised.

S. 11, Suits Valuation Act, and S. 21, C. P. Code,

the general principle on, its judgment be declared y be present it has been or pecuniary be raised in on, J. C. and JOHAMMAD.

178 I.O. 275—AIR 1938 Fesh. 77.

—Executing Court—Power to go behind decree.

The executing Court is competent to go behind the

that the Court had jurisdiction to pass the decree and

—Executing Court—Power to go behind decree.

An executing Court has no right to go behind the

P.W.N. 617.

against an-
behind decree.
nted minor is a
an executing
ed was
is a minor

EXECUTION.

was not represented by guardian *ad litem*, it is necessary for it before it executes the decree to determine whether there is a decree which is to be executed. The rule is that an executing void decree. (*Addison and I PIR TAJ-UD-DIN v. KHAMBATI*)

—*Executing Court—Powers of—Jurisdiction*
Court that passed decree—Enquiry into.

An executing Court must be able to decide whether decree exists at all and therefore where the Court has no inherent jurisdiction to pass the so-called decree the

settles the question as to whether there is an existing dispute upon which the Convention Court can take action.

—Relief against See CONTRACT ACT, S. 74.
A.I.R. 1938 Sind 186.

—*Executing Court—Powers of—When can dis
regard decree.*

No doubt the executing Court has got to take a decree and execute it as it stands, but the executing Court is not precluded from finding out whether any decree had ever been passed at all, and merely because something has been written in a decree form, it does not necessarily make it a decree. Hence where there is no judgment to support the decree sought to be enforced, the decree is null and void.

the parties agreed to pay instalments and also agreed that, in the event of the instalments not being paid, execution could be taken out as regards both. It was contended that the Judge had no jurisdiction to make this consolidation.

Held, that the Ju-
deces and execu-
fact that the compr-
be with regard to t
jurisdiction of the
minded, they could
separately in respect
was effected by the
adopted. (Wart and
v. KANI RAM BHAC
4 B R 818

~~jurisdiction~~
jurisdiction.

A Munsif has jurisdiction beyond his own division.
PROSAD v. JADUNA
 11 B.P. 32-5

Minor—Decree against—Attainment of majority
In the course of execution—Duty to inform Court—On

EXECUTION.

whom lies—Failure to inform Court—Effect—Inference of fraud.

attain
eedings,
ad come
Is that
by his
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fact cannot
(Thomas,
AN PRASAD
1938 O A. 598

P. RAIENDRA PRASAD

Estoppel. See EVIDENCE ACT, S. 115, 19 P L.T. 421.

then case.

Where in execution of a money decree 8 lots of immovable properties were attached but by mistake on the part of Nazir only 7 out of 8 lots were actually sold and the execution case was dismissed on part satisfaction, on a subsequent application by the decree-holder for reviving the execution case in order to sell the property of lot No. 8.

Held, that having regard to the fact that the 8th property had been attached and there was no order made directing removal of attachment there was no legal bar

part of
edy that
in as a
execution case, (S. K.
HAKRABURTY v. KULA
42 C.W.N. 286.
ned by benamidar, Right

rove that the decree holder
is his *benamidar*, is entitled to execute the decree.
(Panchridge, J.) PRADOSH CHANDRA BASU v.
HUGH GORDON. I.L.B. (1938) 1 Cal. 692.

—Sale in—Decree-holder and auction-purchaser—
 of interest in Edmondson house

EXECUTION

FACTORIES ACT (1934), S 2

Debt not of compensation recovered with vendee—
Sale of pro-
r—Lien of
—Charge—
See T. P.
M.L.J. 316.
of proceedings—Right of decret-
recting petition for withdrawal—

Debt not of compensation recovered with vendee—
Sale of pro-
r—Lien of
—Charge—
See T. P.
M.L.J. 316.
of proceedings—Right of decret-
recting petition for withdrawal—

—Sale—Purchaser's rights—Judgment debtor having no interest in property sold—Right of purchaser to refund of consideration from decree holder.

has not an unqualified and absolute right to withdraw from execution proceedings at any stage. The Court can refuse him permission to do so where the circumstances are such that some third party has become involved or has acquired some interest. Where the Court rejects the decree-holder's petition to strike off the execution case on the ground that the pro-

In India an action for recovery of money paid for a consideration which has failed is maintainable as in England inasmuch as S. 65, Contract Act and Ss. 38 and

the money which he got possession of under such error of law or mistake. The auction-purchaser then invoke the principle in his favour

C. P.
J. 91.
1908),
made
ned in

the sale the decretal amount is reduced in appeal, when there is nothing to show that the judgment-debtor would or could have paid the smaller amount decreed in appeal and prevented the sale (*Astler and Edgley, J.J.*)
BARABONI COAL CONCERN, LTD. v. DEVA PRASANNA MUKHERJEE.
42 C.W.N. 1032.

—Sale—Validity—Sale with wrong legal representation of deceased judgment-debtor on record—If valid.
Law.
An order of consent to a prosecution under the Explosive Substances Act which purports to be made by His Excellency the Governor is an order of the Local Government for purposes of S. 6 and is a valid order of consent. The executive authority in the Province is vested in the Governor, and the question whether he has consulted the ministers or not in the matter is not a

FACTORIES ACT (1934), S. 60.

FEDERAL COURT RULES, O. 8, R. 1.

factory does not become a factory under S 9 (3) of the latter Act until it is actually so used (*King, J.*) THE COMMISSIONER OF LABOUR GOVERNMENT OF MADRAS v. RANGANNA GOWD.

1937 M.W.N. 1335.

—Ss 60 (b) (i), 42 and 81—*Prosecution for allowing work to proceed beyond time fixed—Plea in defence—Bona fide mistake—Protection under S. 81, if available*

Where the manager is prosecuted under S. 60 (b) (i) read with § 42 of the Factories Act for allowing work to be done beyond the prescribed period, it is no defence to plead that the accused acted in good believing in the clock in the factory that he is protected by S. 81. That apply to a manager, it was inserted entirely for the benefit of the inspecting be said that the manager is acting under enough in a prosecution under the Act to prove that the

objects, the arrangement also settles other disputes with strangers, which are intimately connected with the disputes of the family, it goes out of the domain of a

A.I.R. 1938 All. 170.

—*Validity—Fairness—Test.*

Family re settlements executed between father, tenant for life and son, after being advised an be considered out even though, e son's position is generous to a son, one, or a son to

J. CASHIN.

A.I.R. 1938 P.C. 103.

—*Validity of—Test.*

Where family agreements have been fairly entered into, without concealment or imposition on either side.

FAMILY ARRANGEMENT.

Consideration.

Essentials.

Upholding.

Validity.

—*Consideration—Settlement of, ration of peace and harmony in far*

The settlement of disputes and peace and harmony in the family consideration for a family arrangement that the claim of one of the parties have had greater legal foundation it does not necessarily show that it bona fide or that the arrangement family arrangement. The bona fide settlement of a family dispute does not require any specific consideration to support it. (*Pandurang Row and Venkat ramana Rao, J.*) RAMASWAMI CHETTIAR MANIKKAM CHETTIAR.

1937 M.W.N. 1249—11 R.M. 127—

47 L.W. 118—176 I.C. 617—

A.I.R. 1938 Mad 236—

—*Essentials—Absence of Beneficial to all parties.*

Where during the lifetime of a between her, her husband's brother and there was almost a certainty among members of the family entered into with a view to avoid a by which each of the three par widows, her husband's brother a benefited it was held that it is

FATAL ACCIDENTS ACT (XIII OF 1855), S. 1—

Damages—Assessment—Basis of.

—*Where the deceased was a person of ordinary*

—S. 1—Suit for damages against several wrong doers—No joint tort—Joint decree against all—If justified. See TORT—NEGLIGENCE.

1938 M.W.N. 1241.

FEDERAL COURT RULES, O. 8, R. 1 and O. 15.

R. 4—*Applicability—Application in revision—Application for leave to proceed with as pauper—Proper procedure—Power of Court and of Registrar.*

—*Essentials of validity—Settlement also effective settlement of disputes with strangers—Such disputes connected with members of family—If ceases to be family settlement.*

GENERAL CLAUSES ACT (1897), S. 3.

possessed by him and the High Court will set aside his order. (*Leach, C. J. and Madhavan Nair, J.*)
KANNAYYA v. LAKSHMIDEVI. 47 L.W. 692=
 1938 M.W.N. 576=A.I.R. 1938 Mad 708=
 (1938) 1 M.L.J. 813.

GENERAL CLAUSES ACT (X OF 1897), S. 3(7)
 —'British India'—Berars, if included in. See C. P.
 CODE, S. 17—APPLICABILITY. 39 Bom =

—S. 2—Applicability—Decree or order
 Direction to party to deposit amount in Co
 fifteen days from date of decree—Interpretation of—
 Date of decree—If to be excluded—Intention of judge—
 If material.

S. 9 of the General Clauses Act, it is true, would not
 apply in terms to a decree or order of Court, but

MARTIN CASHIN v. PETER J. CASHIN.

the Judge who made the order, it was to be made out
 from the expression used, and what was material was the

falling on Court holiday—Payment in reopening day—
 Sufficiency.

S. 10 of General Clauses Act applies to a case in
 which an act is allowed or ordered to be done by an
 Act of the legislature, it does not apply to an act ordered
 to be done by a compromise decree. A compromise
 and is none the
 though there

payment of an insta
 a day which is a
 cannot invoke S. 1
 claim to pay it on the day the Court resumes its
 and Varma, J.). **RAM KINKAR SINGH v. KANAL**
HASINI DEVI. 17 Pat 191=177 I.C. 881=
 11 B.R. 32=19 Pat L.T. 825=A.I.R. 1938 Pat. 451.

GENERAL CLAUSES ACT (XIX OF 1936).
 S. 6 A—Effect of on S. 7, Criminal Law Amendment
 Act. See CRIMINAL LAW AMENDMENT
 S. 7.

GIFT—Date of—Presumption—
Revenue records—Minor donee—

In the case of a gift made b
 venue records, the presumption is
 the gift on the date of his application for mutation.
 Where the donee is a minor and is living with the
 donor, the question of possession is not material.
 (*Hidayat, J.*) **MAL SHAH v. JABRU.**

40 P.L.R. 621=A.I.R. 1938 Lah 791.
 —Validity—Imperfect gift followed by appoint
 ment of donee as executor.

An imperfect gift followed by the appointment of the
 donee as executor, the intention to give continuing,
 entitles the donee to the property. (*Lord Maugham.*)

GOVT. OF BURMA ADAPTATION OF LAWS
 ORDER (1937). 11. 10.

MARTIN CASHIN v. PETER J. CASHIN.

A.I.R. 1938 P.O. 103
GOVERNMENT OF BURMA ACT, S. 85—Objection
 that pleader engaged by opposite party should not
 be allowed to appear—Objection accepted in lower Court
 —Interference. See C. P. CODE, S. 151

A.I.R. 1938 Rang. 241.
 —Interference. See C. P. CODE, S. 151

Government—Necessity.

The Governor-General is the sole judge as regards the
 exercise of his powers under S. 67 II (2) of the Govern-
 ment of India Act, 1919, and he is not bound to give
 an ordinance such as the
 Act of 1935, which when
 a lawful Act. Where the
 inal Law Amendment Act
 ce has been duly notified,
 as that section is on the
 need for a re-notification
 ment extending it to Madras.
 or Rahman, J.) **ARUNAGIRI**
1938 M.W.N. 1105 (2)=
W. 813=(1938) 2 M.L.J. 883.
 nd effect—Bihar Money Lenders'
 Act, S. 10—it void as repugnant to O. 21, R. 66, C. P.
 C. (Patna amendment). See BIHAR MONEY LENDERS'
 19 Pat L.T. 760.

tion of Crown servants.
 nment of Burma Act purports to
 to all servants of the Crown for
 execution of their duty such
 ment of the Act. The protection
 existing pro-
 (*Mooley, J.*)

75 I.C. 860=
 39 Cr.L.J. 565=10 B.R. 487=
 A.I.R. 1938 Rang. 180.

—S
 Under
 it is the

1 faith before
 (*Mooley, J.*)
 Cr.L.J. 565=
 10 B.R. 487=
 Rang. 180.

GOVERNMENT OF BURMA ADAPTATION OF
 LAWS ORDER (1937), Cl. 10—'Right' and 'Privi-
 lege'—Interpretation.

The words "right, privilege, objection or liability
 already acquired, accrued or incurred" in the Govern-
 ment of India Act, 1919, must be construed

Adaptation of Laws Order, 1937, must be construed
 strictly and the words 'right' and 'privilege' must be given
 their legal meaning. In law a 'right' is an advantage
 which can be enforced by appropriate action before a
 Court, and a 'privilege' is nothing more than a special
 right enjoyed by certain persons, beyond the rights which
 the public in general enjoy. Accordingly the right to
 have a suit stayed is in law neither a right nor a
 privilege. (*Roberts, C.J., Mya Bu and Dunkley, J.J.*)
ARUNACHALAM CHETTYAR v. VALLIAPPA CHET-

GOVT. OF BURMA ADAPTATION OF LAWS
ORDER (1937). CL 10.

TYAR.

10 R.1.

CL 10—

S. 10 of the
Laws Order of
acquired and

and effect of—

Law as to, if affected.

The power of the Courts in Burma, to execute a decree of a Native Prince or State in India, arises from the notification of the Government of India under S. 44, C. P. Code, as it stood prior to its amendment. The effect of para. 9 of the Adaptation of Laws Order and Ss. 148 and 149 of the Government of Burma Act, is only to continue in force the law with executions as it existed immediately commencement of the Government of Bu such law has not been altered, repeals the legislature or other competent s any decree of a Native Prince or State in India, executed in Burma may not after the am Native State within

Braund, J.) M M I
R.M.K. KRISHNAN C
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GOVERNMENT O

Contract under—Co.

Formal deed or inden

respondence—Requirements of validity.

There is no justification for holding that a contract in order that it may comply with S. 30 of the Government of India Act must be by deed, s.e., under seal. There is no such provision in S. 30; the section does not

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Dismissal in violation of rules—Right of redress in Civil Court.
Tribunal fundamental principle
Under
1919, 1

OF STATE.

48 L W. 194=
1938 M.W.N. 718—A I R 1938 Mad 749=
(1938) 2 M L J. 141.

S. 45—Scope—Powers of Government of India—
Mining lease—Power to grant—Mining Rules, R. 4—
Order delegating to Board of Revenue—Order of Local
Government reversing grant by Board of Revenue—If

lease has been
to the Board of
les framed by the
authority to grant

J. and Lakshmana Rao, J) SANKARA MINING
SYNDICATE, LTD v. SECRETARY OF STATE.

48 L W. 194—1938 M.W.N. 718=
A I R. 1938 Mad 749—(1938) 2 M L J. 141.
S 30 A (3)—Scope and effect of—Powers o.

1935 All. 781=
A W R (H C) 626=
782—178 I C 177=
A I R. 1938 All. 661,
Rules framed under—
servants at pleasure—

GOVT. OF INDIA ACT (1935), S. 224.

Cl. 1 of S. 222 of the Government of India Act expressly recognises and provides for the contingency of the Office of Chief Justice of a High Court remaining vacant for some time, Cl. 2 of the Letters Patent (Patna) only determines the constitution of that High Court by declaring that it shall consist of a Chief Justice and certain number of other Judges. In the case of vacancy caused by death some time must necessarily elapse before a new appointment is made. It would be preposterous to hold that during the interval between the

GRANT.

—S. 226 (1)—Construction—Matter Concerning the revenue or an act done in the collection thereof—Declaration by the Court of Wards that a person is a disqualified proprietor—If affected by S. 226 (1).

justification for saying that an order of the Court of Wards declaring a female, a disqualified proprietor

of the Chief
the office of

—Chowkidari jagir—Resumability—Zamindar

jurisdiction of the Vacation Bench in the least or render it incompetent.

tion for the performance of such duties are to that

178 I.O. 376

—S. 224—Applicability.

Although S. 224 of the Government of India Act (1935) contains in cl. S. 107 of the previous contains a proviso with no application of it (Costello, A.C. J. v. CHANDULAL.

174 I.O. 51

—S. 224—Construction of the High Court under—If can interfere
See GOVERNMENT
224

—S. 22

Court.

Outside the
ment of India
Court has any
Subordinate Courts within its jurisdiction, such for example as the Court of King's Bench in England has for centuries exercised over Courts inferior to itself (Gwyer, C. J. Sulaiman and Jagakar, J.J.) PASUPATI BHARTI, SECRETARY OF STATE.

1938 O.W.N. 1251—A.I.R. 1938 F.O. 1

—S. 224 (2)—Interlocutory order—Reason.

S. 224 (2) limits the High Court's powers to question judgments of inferior Courts to those given under the ordinary law. Hence High Court cannot entertain a revision from an interlocutory order which is not a decided case (Stemp, J.) AMAR SINGH v. SECRETARY OF STATE 40 F.L.R. 776—178 I.O. 232—A.I.R. 1938 Lah. 442.

—S. 224 (2)—Jurisdiction of High Court—Order under S. 36, Legal Practitioners' Act—Revision. See C. P. CODE, S. 115. 47 I.W. 578.

so long as the holder of the land is the Chowkidar of the village

liable to re-
Act (VI) of
receives pay

—Construction—Discrepancy—Use of words

held before the grant, so far as the question of alienability is concerned. (Stone, C.J. and Bose, J.) LAL CHAND v. DHANOO. I.L.R. 1938 Nag. 229—10 B.N. 226—172 I.O. 580—A.I.R. 1938 Nag. 85.

—Construction—Conflicting descriptions—Which to prevail.

Where there are two conflicting descriptions of the subject-matter of a grant or two conflicting parts of the same description, that which is the more certain and stable and the least likely to have been mistaken or to have been inserted inadvertently must prevail. If it sufficiently identifies the subject matter. Preference ought to be given to that element of the description of the subject-matter which is most consistent with the intention of the parties to be collected from other parts of the deed, illumined, if necessary, by the surrounding circumstances and subsequent conduct of the parties. (Nigeti,

GRANT.

J.) UMRAO BAPU v. RAMKRISHNA BAPU.

I.L.R. 1938 Nag 50=

used the water for other purposes, such as for bathing or for washing cattle, create any rights of ownership in the tank in regard to irrigation tanks as

over where the tank or channel limits of the inam, it must be the grant. (*Vendatavubba Rao and Appa Rao v. Secretary of S*)

1938 DLW.N.

A.I.R. 1938 Mad. 193=

Construction—Extent granted—Decision as to—

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GRANT.

grantees began to extract and work mica from the land.

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had made by the latter certain lands had to his ancestors by the ancestors of his for the gumasthagiri service performed in the past and to be performed in the future and he relied on three documents or sanads as the basis of sanad of the year 1791, which recited that the father of the himself very much for the had rendered very great service and that therefore the watan of gumasta had been

triem. is entered as persons in col. 14, and the shrotriem enjoyed by the per to have entered so be mentioned in the P: the title is perfect possession is prove register about mine revenue was based on rural land. The land of producing crops

GRANT.

—Held, on a construction of the documents, that the three sanads read together did not confer anything more than the office of gumasta and provide that the office was to be remunerated by a one-fourth share in the income of the watan lands, and as such was clearly resumable, there being no grant of land at all burdened with service. The grant being one of an office only would be resumable whether it was for past and future services or for future services only. (*Wadia, J*) HAN MANT v. GURUNATH. 40 Bom L.R. 88. 174 I.O. 809 = 10 R.B. 487 = A.I.R. 1938 Bom 188.

—Construction—Sberi lands—Grant by Government to member of joint Hindu family—Grant *prima facie* in name of individual member and not for benefit of family—If joint family property or grantee's separate property. See HINDU LAW—JOINT FAMILY. 40 Bom L.R. 88.

—Construction—Subia, Agraharam—Open use of to Government not collecting mission of granted's title to.

Certain tanks situated in used for purpose of irrigat' openly cultivated by the Agraharamdar. The Government collected cesses, but forbore from collecting assessment.

Held, that collecting cesses but forbearing to collect assessment almost amounted to an admission on Government's part of the Agraharamdar's title to the tank beds whether the Government so intended it or not. (*Venkataramba Rao and Abdur Rahman, JJ.*) RAO v. SECRETARY O 47 L.W.

—Construction—House—Restriction as of Government.

Where the sanad recited that the grantee should not transfer his share 'to any one not taluqdar of the heir to a taluqa', it only means that the grantee could transfer his share only to any one in his own position or to his own heir apparent or to the heir apparent of such other person. The intention of the Government was that these houses should go with Taluqa as an appurtenance thereof. The house should follow the Taluqa. (*Hamilton and Yorke, JJ.*) KAZA HUSAIN KHAN v. SAJIYD MAHOMED 1938 H.A. 353.

1938 O.W.N. 462 = 1938 O.L.R. 244.

—Construct 'Heir to taluqa'—

In connection v Estates Act, the word only in the used to-day name precession 'heir to to such a person' (*Hamilton and J*) SAJIYD MAHOM

—Crown land—Grant of land to daffadar by Revenue Divisional Officer—Cancellation by Collector—Validity of.

GRANT.

Where a Revenue Divisional Officer made a grant of valuable Crown lands to the daffadar of his office, who was not a member of depressed classes, and the grant was set aside by the Collector under his revisional powers, that existed in 1925.

Held, the original grant must be considered to have been absolutely devoid of authority. The grant being adverse to the interests of the Government, the Collector acted within the scope of the authority conferred on him by Board's Standing Orders No. 15 in cancelling the grant. (*Pandurang Row and Abdur Rahman, JJ.*) VENKATARAMNAM v. SECRETARY OF STATE FOR INDIA. 1938 M.W.N. 65 = 177 I.L.J. 629 = 11 B.M. 360 = A.I.R. 1938 Mad 318 = (1938) 1 M.L.J. 187.

—Duration—Permanent tenancy of watan lands—Death of grantor—Status of tenant—Acceptance of rent from latter—Effect of.

A permanent tenancy of paragona watan lands ceases on the death of the grantor; the grantee thereafter becomes a tenant on sufferance or, on acceptance of rent from him, a tenant from year to year—not a permanent tenant. (*Broomfield and Mathlin, JJ.*) BABASAHEB

—Inam—Alienability—Construction of sanad—Inam permanent—To grantee, 'his sons, grandsons and great grandsons and so on from generation to generation'—Confirmation by Inam Commissioner—Limitation to lineal male descendants of grantee—Effect of.

Where a sanad of 1779 granted certain lands as jat

inalienable.

Held, that there was nothing in the tenure of the village to indicate that alienation was forbidden, and that the terms of the Inam Commissioner's renewal order, do not lay down any restriction as to the grantee's power of alienation but merely state the period during which the village would be allowed to be enjoyed as inam. (*Broomfield and Wadia, JJ.*) GAJANAN v. JANKIBAI. 39 Bom L.R. 1304 = 174 I.O. 266 = 10 R.B. 436 = A.I.R. 1938 Bom 113.

—Inam—Resumability—Presumption as to—Rule—Pattamdar service inam—If resumable.

(1) grants of lib service, (2) future service; interest in land groups (1) and resumable by (2) that effect, to dispossess several gene-establish facts rene that the In the case of there is a presumption, to start with, that the grantor has a right to resume and that it is incumbent upon the holder of the grant to rebut this presumption when once it is

GRANT.

established that the grant is of this nature. As to

NAIDU v. RAJA OF VIZIANAGARAM.

(1938) M.W.N. 853-48 L.W. 458-

A.I.R. 1938 Mad 1006.

Inam—Rights under—Extent of—Evidence—Grant by the British Government—Inam title-deed—Value of original grant as evidence.

The law undoubtedly is that after cession of territory the only enforceable rights in respect of lands ceded, are

curtail or limit the right conferred by its terms, the

Rights officer.

When a Records of Rights Officer comes across an

a channel across a public pathway amounts to an infrac-

however, the pathway is not a public thoroughfare but a village pathway, the rights to which are for villagers only, no question of injury would arise by obstruction of the same.

of a lost grant can, therefore, arise in respect of a right to take water by cutting a channel along a village pathway. (*Mukherjee, J.*) JATINDRA NATH MULLICK v. SATYA KINKAR SAIN, 42 C.W.N. 435-177 I.C. 53-11 B.C. 199 (2)-A.I.R. 1938 Cal 366

Occupancy holding becoming a grove

Disappearance of grove—Grove-holder's title of grove plot—Position and rights

GRANT.

revived therein. The transferee of a grove plot forming

1938 A.W.R. 37 (B.R.).

Presumption—Zamindari—Irrigation tank within boundaries of zamindari—Tank not communal property—Government not exercising ownership for over a century—If to be presumed excluded from zamindari settlement—Ownership of tank.

A tank within the boundaries of a zamindari, which is not communal property but which is an irrigation tank

can be invoked
—Right to use water from a particular source for all times.

grant, and not where the circumstances show that there

right to remove the mains granted for such purposes while the zamindar has no such right. The economic theory on which these villages were constituted or established in the past was that all the necessary amenities for communal life in the village should be

village servants or

GRANT.

servants of the community performing services which were necessary for the welfare and continuance of the village community. It is well known that the village

to have been granted for village services and not for purely private purposes.

Such in

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proprietor of the grove as he is not the sole Zamindar.

GRATUITY—Book debts—Difference. See T. ACT, S. 6 (A). 1938 Rang. L.R. 54

tive, that is to prove that such trees were as a rule they are of spontaneous growth of the groveholder, who asserts that they prove his assertion. (*Drake Brockman J.M.*) KAILASH BIHARI LAL v.

Replacing of fallen trees—Groveholder of possession right—Custom—Wajib-ul-ars—Interpretation.

The right to replace fallen trees is part of the common law rights of a grove holder. Where according to the *wajib-ul-ars* containing the record of custom it proves a tenant is stated to be not entitled to replace

When ceases to be one—Tests.

Though the fact that a major portion of the land in question had been brought under cultivation, may not by itself be sufficient to enable a Court to hold that a grove had lost its character as a grove, yet where the number of trees on such land is disproportionately small to the

CHANDRA B. 1938 A

GUARDIAN—mother—Extent of. MOTHER.

GUARDIANS AND WARDS ACT (1890), S. 9.

Maintenance—Arrears of—Order issuing warrant against ex-guardian—Legality. See GUARDIANS AND WARDS ACT, S. 34. 68 O.L.J. 68.

Transfer by guardian—Remedy of ward—Suit to set aside—If essential—Repudiation—What amounts to.

A transaction which is voidable at the instance of the minor may be repudiated by any act or omission of the late minor, by which he intends to communicate the repudiation, or which has the effect of repudiation for

E.P. 59—A.L.R. 1938 Pat. 337.

WARDS ACT (VIII OF 1890)

Guardian—If includes a defacto

guardian—Power to order defacto guardian to deliver

property in his possession.

D WARDS

L.R. 64.

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Effect of

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to appoint another person as the guardian or to give

another person the custody of the minor child, unless it

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GUARDIANS AND WARDS ACT (1890), S. 12.

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hear the application
MUNSHI RAM

—Ss 12 and
appointed guardian to

GUARDIANS AND WARDS ACT (1890), S. 29.

—S 17—Welfare of minor—Consideration as to—
If can override law to which minor is subject.

The Guardian and Wards Act do
Court to subordinate the law to whi
subject to the considerations of wh.
minor's welfare (*Harris and Alir*
v AISHA BEGAM).

1938 A

—S 19—Scope—If controls S.

Recognition of antecedent rights of assignee—Sanction
of Court—Necessity.

40 P.L.R. 61.

—S. 29—Scope—Compliance—Permission obtain-

—Ss 25, 4 (5) (b) (ii) and 12—Application by
mother for custody of minor daughter—Minor removed
from Court's jurisdiction—Application, if can be grant-

ed.
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fer
January, 1931, on the ground that the child ordinarily
resided in the Court's jurisdiction and on 2nd February,

and absence of permission for a particular alienation
renders it void. Where a permission is applied for a
particular mortgage of the Ward's property for a specifi-
ed amount on certain terms and granted by the Court,
ntly and part of the
is bound

executes a mortgage for an
ed in the original sanction

GUARDIANS AND WARDS ACT (1890), S. 29.

terms without fresh permission, the mortgage so executed is invalid and unenforceable against the minor, because the former permission cannot cover the mortgage which is different from the contemplated one and executed under different circumstances.

of S. 2
f.) L

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If void

A transfer by the guardian without leave of the Court is only voidable and not void. S. 30 says that transaction shall be voidable.

(Venkatas
MALAI G)

S. 29—Transfer without sanction—Avoidance—Restoration of benefit.

In a case where the property of a minor has been conveyed by the guardian without permission of the District Judge, the minor in a suit brought against him, cannot avoid the transfer without restoring the benefit which he has received. (Colister and Bajpai, JJ.)

JAI NARAIN LAL v. BECHOO LAL.

L.L.B. 1938 All. 614 = 1938 A.L.J. 521 =
1938 A.W.R. 1319 = 1938 V.R. 900

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GUARDIANS AND WARDS ACT (1890), S. 34.

the mortgage money, the assignee has no right to file a suit on the mortgage as assignee and to ask the Court to recognise his transfer. It is not correct to say that the minor cannot repudiate a transfer by his guardian

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(1938) 2 M.L.J. 428.

Ss. 30 and 31—Scope—Sanction to guardian for or purpose of discharging liability on faith of sanction—Bulk of loan—Balance applied for purpose not sanctioned—Creditors right to claim whole amount of loan—Proof of necessity.

Where a guardian of a minor appointed under the Guardian and Wards Act obtains the sanction of the Court authorising him to execute a mortgage of the minor's property and to borrow a certain amount for the purpose of paying off a mortgage decree against the estate, and executes a mortgage for the amount authorised by Court, and no fraud or underhand dealing is alleged, the

minor cannot repudiate the mortgage.

—S. 31—Holding of enquiry—If essential—

—S. 34—Arrears of maintenance due to minor—

—S. 35—Power of Court to make orders—

—S. 36—Power of Court to make orders—

—S. 37—Power of Court to make orders—

—S. 38—Power of Court to make orders—

—S. 39—Power of Court to make orders—

—S. 40—Power of Court to make orders—

—S. 41—Power of Court to make orders—

—S. 42—Power of Court to make orders—

—S. 43—Power of Court to make orders—

—S. 44—Power of Court to make orders—

—S. 45—Power of Court to make orders—

—S. 46—Power of Court to make orders—

—S. 47—Power of Court to make orders—

—S. 48—Power of Court to make orders—

—S. 49—Power of Court to make orders—

—S. 50—Power of Court to make orders—

—S. 51—Power of Court to make orders—

—S. 52—Power of Court to make orders—

—S. 53—Power of Court to make orders—

—S. 54—Power of Court to make orders—

—S. 55—Power of Court to make orders—

—S. 56—Power of Court to make orders—

—S. 57—Power of Court to make orders—

—S. 58—Power of Court to make orders—

—S. 59—Power of Court to make orders—

—S. 60—Power of Court to make orders—

—S. 61—Power of Court to make orders—

—S. 62—Power of Court to make orders—

—S. 63—Power of Court to make orders—

—S. 64—Power of Court to make orders—

—S. 65—Power of Court to make orders—

—S. 66—Power of Court to make orders—

—S. 67—Power of Court to make orders—

—S. 68—Power of Court to make orders—

—S. 69—Power of Court to make orders—

—S. 70—Power of Court to make orders—

—S. 71—Power of Court to make orders—

—S. 72—Power of Court to make orders—

—S. 73—Power of Court to make orders—

—S. 74—Power of Court to make orders—

—S. 75—Power of Court to make orders—

Rao and Abdur Rahman, JJ.) SIVANMALAI
GOUNDAN v. A
1938 M

S. 30—C

It is clear that of the Guardian created guardian ward, but also a natural guardian.

NARAIN LAL v.
1938 A
176 I.C.

S. 30—S.

Transfer by assignee—Maintainability—Limitation Act, Art. 44—Suit by minor to set aside transfer—If obligatory

When an assignment by the guardian of a minor of a mortgage to which the minor is entitled is repudiated by the minor, the minor himself files a suit for recovery of

A.I.R. 1938 Oudh 65

S. 34—Arrears of maintenance due to minor—

GUARDIANS AND WARDS ACT (1890), S. 35.

the minor's estate to the new guardian is bad, when the ex-guardian has no property of the minor in his hand and has made it over to the new guardian and has submitted accounts. If on the accounts anything is found due from him to the minor, appropriate steps could be taken against him for the recovery of the said amount. (R. C. Mitter, J.) **GOLAM KADER HALDAR v. MOHAMMAD ABDUL RASHID** 68 O.L.J. 68.

—S. 35—Security bond to amovable property for due per Bresch—Assignment of bond by C and guardian—Assignment by latter attaining majority—Suit bond—Competency—T.P. Act, S. 20.

Where a person appointed as under the Guardians and Wards bond in favour of the Court account for all the movable pro-

HABEAS CORPUS

When the *quodam* guardian has complied with the directions of the Court under sub S. (3) the Court has

40 P.L.R. 532.

assignment is perfectly valid and entitles the ward to sue on the bond and to enforce its terms (Pandurang Rao and Venkataramana Rao, AYYAR v. KRISHNA AYYAR.

—S 41 (3)—Direction to when permissible

Where the only object is to protect the property the object can well be served by charged guardian to furnish solvent ment of any amount that may be found of accounts. It is hard on a guardian upon to deposit a large amount in ca

ABAJI v. DAMODAR ABAJI. 1905 Ind. J. 402-4 176 I.C. 693=11 R.N. 50=A.I.R. 1938 Nag. 399

—S 41 (3) and (4)—Discharge of guardian—Discretion—If unfettered—If revisable

S. 47 and 48—Provision for maintenance in order appointing guardian—If appealable.

Where in an order appointing a guardian a provision be ne,

A.I.R. 1938 Nag. 495.

tribunal to which an application for *habeas corpus* can be made and must hear them on the merits. The jurisdiction is of a peculiar and exceptional character a every Judge has it and not merely the High Court

HIGHWAY.

HINDU LAW.

1938 M.W.N. 1161.

HIGHWAY—Dedication—Inten
from long user.

Where the roofs of a shop have
trains for access to the neighboring
long time, such user does not necessarily raise a pre-
sumption as to dedication in every case. There must be
an intention to dedicate, of which the user by the public
is mere evidence and no more. A single act of interrup-

trate and the rights of the public, and it is
not sufficient to establish the manner of

Use as a public path—Presumption of dedication
from long user.

Where it is found that a path has been used as a
public path from time immemorial by deduction to the
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public—If may be presumed.

When a man builds a row of houses with a passage
in front and the passage opens into an existing public
highway in each end and he sells and lets these houses
and thus invites others to come and use the passage, a
presumption may legitimately be drawn that he intended
to dedicate it to the public. The question, however, is

HINDU LAW.

Adoption
Alienation.
Applicability.
Debts.
Family arrangement.
Gift.
Guardianship.
Inheritance.
Joint family.
Limited owner.
Maintenance.
Marriage.
Migrating family.
Minor.
Mittakshara.
Partition.
Religious endowments.
Reversioner.
Stridhana.
Succession.
Widow.
Wills.

Private street—Persons having wall facing
street—Right to make openings in wall.

Where a street which is the private property of an
individual is accessible to the public, any one has a
right to make openings in his own wall facing such a
street. Hence the owner of such street cannot obtain
injunction restraining such person from making such
openings. (*Skimp, J.*) LACHHMI NARAIN v. MANAK
CHAND. A.I.R. 1938 Lah. 841.

Procession—Right to conduct in public street and

I. Adoption.

Burden of proof.
Ceremonies.
Effect of.
Prior gifts by adoptive father.
Rights of adopted son.
Who can adopt.
Who can be adopted.
Widow.
Absence of Sapindas.
Assent of Sapindas
Implied authority.
Powers of.
Subsequent alienation

law right of access to the public road exists equally in
the case of roads vested in a municipality, and is not
automatically extinguished by reason of the fact that
the Municipality under its statutory powers leases out a

HINDU LAW—Adoption.

The giving and taking ceremony is the essence of adoption and the law does not accept any substitute for it. Mere expression of consent or execution of a deed of adoption though registered but not accompanied by the actual delivery of the boy does not operate as valid adoption. (*Abdul Qayoom, C. J. and Waur, J.*) PARASRAM v. PANJABOO. 40 P.L.R. J. & K. 42.

—Adoption—Effect of—Divesting of estate—Limits of the rule.

Whatever doubts there may be about divesting in

HINDU LAW—Adoption.

—Adoption—Who can do it—Right of unmarried man.

the
M.

Validity among Desasta Brahmins of Belgaum in Bombay—Custom as to.

There is a well recognised custom prevalent among the

PUNAMCHAND.

1938 N L J 176

—Adoption—Effect of—Divesting of property test.—Principle underlying

A person in whom the property is death of the sole surviving member of takes it subject to a defeasance in adoption by the widow of a predeceased former joint family. The adopted son must get such interest as his father would have got had he been alive at the date of adoption. When a deceased coparcener's widow adopts a son to her husband, he acquires his father's interest notwithstanding that it lapsed to the survivors. It is the right of the adopted son and not the existence of the coparcenary that is the true criterion for determining the judicial effect of the adoption. (*Stone, C. J. and Niyogi, J.*) MT. DRAUPADI v. VIKRAM. 1938 N L J 237 = A I.R. 1938 Nag. 423.

—Adoption—Prior gift by a duty as against adopted son—Adoption same transaction—Validity of

It must be taken to be the rule among Sudras that the adoption of a sister's son is valid unless in the particular case with reference to the particular community there is

—Adoption—Widow—Absence of sapindas—Widow if can adopt of her own volition. See HINDU LAW—ADOPTION—WIDOW—MADRAS PRESIDENCY. A I.R. 1938 P.O. 34.

—Adoption—Widow—Assent of Sapindas—If confined to agnates of husband. See HINDU LAW—ADOPTION—WIDOW—MADRAS PRESIDENCY. A.I.R. 1938 P.O. 34.

—Adoption—Widow—Authority to widow to adopt—Construction—Will by husband authorizing adoption by pregnant wife in case latter gave birth to son and daughter—Adoption by estopped from dis-

dent partition

(*Beaumont, C. J.*) An adopted son cannot a partition effected before he was adopted. (*C. J. and Wastoodru, J.*) CHANBASAP HAPPA 40 Bom

Y. D. 1938—46

Association of members of adoption by the husband

HINDU LAW—Adoption.

Under the interpretation of the Mitakshara law, as generally accepted in the Madras Presidency an adoption by a widow would be valid only if made under the authority of the lady's husband, or failing that with the assent of his kinsmen. Though the requisite authority need not necessarily be express, it is implied authority there evidence of a cogent character.

to show that the husband ever contemplated a solemn adoption, or that he was prepared to leave the selection on of the igation of

HINDU LAW—Adoption.

the right of adoption of a widow of a deceased coparcener (*Beaumont, C. J. and Woodrow, J.*) CHEN-BASAPPA v. HUCHAPPA. 40 Bom. L.R. 1185.

Adoption—Widow—Powers—Authority given by will—Suggestion as to boy to be adopted—Executors to

of the executor.

Where a Hindu widow was directed by the will of her husband to adopt a particular boy and if he was not available any other suitable boy, and where the will

adras law adopt however strong the direction of her husband

THAL

19 Pat L.T. 169—1935 A.W.R. (P.C.) 62—
66 O.L.J. 581—40 Bom.L.R. 701—47 L.W. 110—
1938 O.W.N. 117—172 I.O. 721—1938 O.L.R. 61—
1938 O.A. 51—1938 A.L.R. 77—
A.L.R. 1938 P.O. 34—(1938) 1 M.L.J. 426 (P.O.).

Adoption—Widow—Partition between two branches of joint family—One branch consisting of only one male member and widow of latter's paternal uncle—Adoption by widow—Validity—Right of adopted son to share in family property.

N. and P. who were sons of B. were members of a joint Hindu family along with the deceased brother V. P. died in 1923, leaving a son N. also died leaving a son. In 1923 partition between N's son on the one side and descendants of V. who formed the other son got a half share, which was made maintenance of P's widow, and the other half share and the member branch continued to live joint as between 1933, P's widow adopted the plaintiff

challenge the partition of 1932, which could not be reopened, (2) that N's son on partition with the other branch in 1932 took the half share as joint family property and not as his absolute property, and though he and the widow of P. were the only members of the joint family, it could not be said that the coparcenary

Adoption—Widow—Powers of—Joint family consisting of father and son—Death of son before father leaving widow and daughter—Death of father—Property inherited by widow of father—Subsequent adoption by son's wife—Validity—If devise property vested in father's widow—Rules.

Where after the termination of the coparcenary by the death of the son, the widow of the son

was his absolute property. Held that the adoption though valid for spiritual

ANANDIBAI v. VASUDHAR.

Adoption—Widow—Powers of—Prohibition by husband implied from disposition of property and direction as to performance of funeral rites in will—Effect of—Consent of sapindas—Value of.

If there is a prohibition by her husband against adoption, an adoption by her even with the consent

the surviving coparceners could effectively bar the adopted son of a deceased coparcener from claiming a share in the family property would have the effect of frustrating the adoption which might in any way conflict with his disposition expressed in the will and that the dispositions could not be given effect unless the adoption was prohibited, a prohibition

HINDU LAW—Adoption.

and thereupon the property passed to the latter's mother *L.* *L.* died a year later, and the property passed to *D's* mother *B.* *B.* died some years later, and the property then passed to the 1st defendant who later on adopted defendant No 2. Plaintiff, a reversioner, claiming through a collateral branch of the family sued for declaration that the adoption was illegal and void and not binding on him.

Held, that the adoption was valid, but that it had no effect on the devolution of property.

plaintiff. (*Beaumont, C.J., Broomfield*

J.J.) *RADHADAI DAMODAR v. RAJAR*

I.L.R. 1938 Bom. 679—177 *I.C.* 165—11 *E.B.* 68—40 Bom *L.R.* 559—*A.I.R.* 1938 Bom 383 (*F.B.*).

Adoption—Widow—Subsequent alienation—Validity—Agreement between adopting widow and natural father of adoptee—Agreement permitting widow to deal with estate at her will without regard to adopted son's rights and interests—Validity

An arrangement between the adoptive widow and the natural father of the adopted boy which permits the widow in practice to deal with the estate at her own sweet will without any reference to the rights and interests of the adopted son is not binding on the adopted son. At the time of adoption of a son an agreement was entered into between the adopting widow and the natural father of effect, that the wife and enjoy all her time and after her d possession thereof a alienations thereafter of practically the whole of the estate. The adopted son is not bound by such an agreement and for that the

HINDU LAW—Alienation.

KOTRAYA v. MALLAPPA BASAPPA.

40 Bom. *L.R.* 1029—*A.I.R.* 1938 Bom. 500.

Alienation—After-born son—Right to set aside—

Father's alienation.

Where the only other coparcener in existence besides the father at the time of an alienation of family property by the father is a minor, that son alone is entitled to sue to avoid the alienation of his share of the

after the alienation though before his death, because the right to challenge the alienation is confined to coparceners alive on the date of the alienation. (*Newman, J.*) *PAPPU REDDI v. APPAJI NAVAKKAR.*

1937 *M.W.N.* 1261—174 *I.C.* 838—10 *E.M.* 744—*A.I.R.* 1938 Mad. 224.

Alienation—Antecedent debt—Meaning of—Mortgage for money borrowed for taking sarpehgi—Mortgage contemplated at time of taking sarpehgi but executed later—If antecedent.

Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached. The two transactions may be entirely dissociated from

taking a sarpehgi, but is executed some weeks later, it is independent transaction. (*Fort and Ravi*) *RANKARAN THAKUR v. BALDEO THAKUR.*

Alienation—Coparcener—Mortgage of joint family property to secure private debts—Mortgage taking mortgage with knowledge of private character of debt and of property being joint family property—Subsequent partition—Allotment of mortgaged property to member not mortgagor—Remedy of mortgagor—Sub-

private debts of the mortgagor, he takes the same subject to the right of the other members of the family

Alienation.

After born son.

Antecedent debt.

Benefit to the family.

Coparcener's mortgage for private debts

Father.

Guardian.

Illegal transfer by adult members.

Junior members

Manager

Validity.

Widow.

Authority

Imprudent transaction.

Necessity.

Power

HINDU LAW—Alienation.

gaga. (*Rangnekar and Wadia, J.J.*) GOVIND GURU-
NATH v. DEEKAPPA.

40 Bom.L.R. 539=
177 I.O. 290=11 R.B. 74=
A.I.R. 1938 Bom. 388.

174 I.C. 88=1938 A.L.R. 237=
10 B.A. 546=A.I.R. 1938 All. 100.

—Alienation—Widow—Imprudent transaction.

The mere fact that a widow entered into an imprudent transaction is not sufficient to set aside the transaction effected by her on re
J.J.) JOTI L.

A.I.R. 1938 Pat. 281.

—Alienation—Widow—Necessity—Alienation for expenses of litigation for protecting widow's right to

(*Ismail, J.*) RAM
1937.

—Alienation—Widow—Necessity—Proof—Consent by reversioner—Presumption.

Consent of the reversioner to an alienation made by the widow is presumptive proof of necessity and the presumption may be controverted by other evidence. (*Madhavan Nair and King, J.J.*) THIMMANNA BHATTA v. RAMA BHATTA.

A.I.R. 1938 Mad. 300.

—Alienation—Widow—Necessity—Proof—Recitals in document—Value of—Absence of recitals of necessity—Lapse of time—Effect of.

HINDU LAW—Applicability.

But she is not entitled to transfer her husband's estate generally. (*Ismail, J.*) RAM ADHAR MISHRA. 1937 A.W.R. 1223=
174 I.C. 88=1938 A.L.R. 237=
10 B.A. 546=A.I.R. 1938 All. 100.

—Alienation—Widow—Power of to dispose of shares of legitimate sons of husband.

A Hindu widow has no power to alienate her husband's estate.

—Alienation by widow—Setting aside—Suit for—Proper decree—Order for payment by one party to opposite party—Power of Court to pass.

In a suit to set aside a transaction by a Hindu widow on the ground that it is not justified by legal necessity, the Court to pass is that the sale is not justified; if it were justified.

But no question of payment either by one party or the other to the opposite party can possibly come into the Court's consideration. Nor is the Court entitled to enquire into the consideration for the transaction.

entitled to retain possession of property for the lifetime of the widow on payment of interest thereon.

order was wrong and should be set aside. ALODHAN KUAR v. RAMA BHATTA. 173=4 B.R. 591=
E. 1938 Pat. 191.

—Consent of next reversioner—Effect of. See HINDU LAW—FAMILY ARRANGEMENT. 1938 P.W.N. 125.

See also HINDU LAW—WIDOW—ALIENATION.

—Applicability—Claim to belong to regenerate class—Tests to be applied—Panchali, if belong to regenerate class.

The criteria to be applied in determining a question whether a particular caste or community belongs to the twice-born classes are (1) the consciousness of the caste, (2) its customs, and (3) the acceptance of that consciousness by the other castes. Applying the above criteria

custom or usage varying the law. (*Wilton, J.*) CHAND KOER v. PEN RAJ. 1938 A.M.L.J. 79.

Succession—Stridhan daughter—Right of in

Law as to succession

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HINDU LAW—Applicability.

of her mother with an unmarried daughter. (*Collister and Bajpai, JJ.*) JAIWANTIE P. ANANDI DEVI.

I.L.R. 1938 AIL 196—1937 A.W.R. 1184—1937

grandson—Rule as to—Applicability of.

The rule of Hindu Law as to the pious obligation of the son and grandson to pay the father's and grand father's debts is not applicable to Nambudis of Malabar. (*Varadachariar and Pandrang Rev, JJ.*) NARAYANA AIYAR v. MOORTHY KENDAN.

I.L.R. 1933 M.S.

47 L.W. 532—1938 M.W.

A.I.R. 1938 Mad. 643—(1938) 1 M

Dancing girls—Adeption—Ceremonies—

tion of two daughters—Validity—Custom.
No particular ceremony is necessary for an by a devadasi; and there is no legal objection to tion of two daughters by a dancing girl provided such a practice is sanctioned by the custom of the family. (*Madanmoh, J.*) GANGANMA v.

partition.

The practice of adoption among devadasis in Madras has nothing to do with religious benefit but is purely a custom arising from the fact that the daughters of that class to be adopted cannot be married by the father; the daughters are partitioned among the mother and the father. (*Madanmoh, J.*) GANGANMA v.

purpose of prostitution—Validity and effect of.

The adoption of a minor by a dancing girl for pur-

Ayavaharika.

Coparcener

Father

Joint family business.

Guardian

Manager

Trading family.

Widow

Debts—Ayavaharika

against father—Liability of

The trend of authority is in

debt which is repugnant to

rika debt and in each case

Court to decide whether the debt in question is repug-

son and the joint ancestral property is not under an

Y. D. 1938—47

HINDU LAW—Debts.

obligation to discharge. (*Collister and Bajpai, JJ.*)

Debts—Ayavaharika—Damages for malicious

prosecution—Debts to pay off such decrees—Binding
nature.
Where there were several decrees against the father for damages for malicious prosecution his acts in making the malicious complaints are tortious acts. They are illegal, immoral or improper acts and the pecuniary liability arising therefrom is not binding on his sons and

SERVAL.

1938 M.W.N. 838—48 L.W. 271—

(1938) 2 M.L.J. 399.

Debts—Ayavaharika—Decree for compensation

clearly repugnant to good morals and hence the sons were not liable in respect of that decree debt. (*Bennet*

The rule of exemption from payment of illegal or

while protecting the son's right, as far as possible, is designed to prevent ill-advised and reckless attacks.

The joint family property cannot be taken in execution of a decree passed against the father for payment of a debt, which is found to be for immoral purpose. (*Bennet and Verma, JJ.*) **BED RAM SINGH v. INDER-SIT SINGH.**

1938 A.W.R. (H.O.) 510—176 I.C.

HINDU LAW—Debts.

11 R.A. 136=1938 A.L.R. 669=

A.I.R. 1938 All. 437.

Debts—Aryavaharika—Immortality—Connexion

trusted to pay in the land revenue, borrowed certain amount for the purchase of some property, which purchase was never effected.

Held, that there was a connexion between the mort-

HINDU LAW—Debts.

executes a mortgage for the purpose of raising money to pay the purchase money, it cannot be said that the mortgage debt is an antecedent debt so as to be binding on

usufructuary mortgage taken by him—If binding on son.

There is no warrant for holding that the liability of a Hindu son to pay the antecedent debts of his father

1938 A.L.R. 207=A.I.R. 1938 All. 44.
Debts—Father—Award against Co-operative
in which father is a member—Liability in

binding on sons.

Where money is advanced to a Hindu father on the strength of an agreement to execute a mortgage

however, be a genuine agreement and not a device for evading the law.

Varadachariar, J.—There is a real distinction between cases in which the lender and the borrower contemplate the giving of security only as a future possibility and cases in which from the template only a mortgage loan.

A.I.R. 1938 Nag 434.

Debts—Father's debt—Pious obligation of son—Debt as to claim judgment.

debtors—Pious obligation—11 d. 101. 344 CONTRACT ACT, S. 43. (1938) 2 M.L.J. 287.

Debts—Father—Decree against—Executability against sons' shares—Pious obligation.

A debt, secured or unsecured, contracted by the purpose, im- sons and if ne, it may be coparcenary

erty. In such a case the decree-holder can proceed execution against the sons' shares and need not pro- by a separate suit. (Stone, C.J. and Bose, J.)

I.L.R. 1938 Nag 136=

14 I.C. 621=10 R.N. 408=

A.I.R. 1938 Nag. 24.

for costs against—Sons—

and family interest—Sons.

Debts—Father—Antecedent debt—Purchase of

HINDU LAW—Debts.

Where a decree for costs is passed against a Hindu father, who resisted a suit for specific performance in the interests of the family and as a man of ordinary prudence would have done, the action of the father is in no way contrary to good morals and hence the sons are liable to pay the decree after the father's death. (*Pennet, A.C.*, and *Jarma, J.*) **KAM LAL MISIR v. JAGDISH TEWARI.** 1938 A.W.R. (H.C.) 630 = 178 I.C. 318 = 1938 A.L.J. 852 =

Debts—Father—Interest if could be proved S. 145

Debts—Father—Sued in representative suit by sons impleading on

Where on a mortgage is used in his representative capacity and a decree obtained thereon, that cannot operate as *res judicata* as against the sons in a suit brought by them to question the mortgage on the ground that the consideration was given for immoral purposes. (*Misra, J.*) **RAJESHWAR DUPE v. KAM DUNDAKH MISIR.**

1938 A.W.R. (H.C.) 700 = 1938 A.L.J. 1053.

Debts—Father—New business started by father—Mortgage for antecedent debts and for fresh cash advance—Liability of minor son—Father's share in family property—If can be proceeded against—Pious obligation of son—Suit against son after father's death—Limitation.

A Hindu minor son's interest in the joint family property is bound by, and lying a debt incurred by his a new business started by the son's pious obligation. The pious obligation of a debt under a mortgage part of which consists of cash advance, can be directed to the former the minor son's interest in the property but with regard to the latter (cash advance), though the minor son would not be bound by the debt as a mortgage debt, his interest in the joint family property would be liable for that debt by virtue of the fact that it is a debt of the father, and the son's interest is therefore liable to be sold in execution of a money decree against the father. This liability can be enforced even in a suit brought against the son after the death of the father. In the case of a mortgage which is registered the period of limitation for a suit against the son for a money decree, is the same as

11 R.B. 1 (2) =

Debts—Father—Proceed against father alone after partition's share—Right of creditor.

A creditor who chooses to oblige a Hindu father alone after a partition and the son, in respect of a debt cannot proceed to execute the decree against the property in the hands of the divided son. Though partition does not put an end to the son's liability for a father's debt to a creditor, it does not make the son a party to the debt.

HINDU LAW—Debts.

1938 M.W.N. 525 = A.I.R. 1938 Mad. 578 = (1938) 1 M.L.J. 875

Debts—Father—Pre partition debt—Renewal of debt by father alone after partition—Suit by creditor—Liability of sons—Pious obligation.

A Hindu father has no authority after partition to renew a promissory note debt borrowed before partition so as to make it binding on his divided sons. Such renewal entirely wipes out the original debt, and by the

1937 M.W.N. 1306.

Debts—Father's debt—Son's liability—Attachment of father's share before judgment—Death of father—Son impleaded as legal representative—Decree and sale of son's share—Validity—Right of other co-parceners to question.

Under the Hindu law no co-parcener other than a male descendant is liable for the personal debts of a deceased co-parcener when the latter's share in the joint family has survived to him. But an exemption is made in cases where the share of the deceased had been effectively attached during his lifetime. Where the deceased co-parcener has left a son, the son's share is liable for the father's debt notwithstanding that it may have come to him by intestate succession.

Debts—Father's personal debt not charged on family property—Son's liability—Pious obligation—When arises—Debt contracted by father prior to birth of son—Absence of necessity—Son's right to challenge creditor's right to recover from family property during father's life time—Law in Mysore.

A Hindu son in Mysore is entitled to challenge a debt contracted by his father, when it is a mere personal debt and when it is contracted for purposes not binding on the family, although the debt may have been contracted by the father before the son's birth. Under the

Debts of father—Son's right to question—Scope and extent of—Award executable against father as a decree—Son not a party to award, if can challenge it in

HINDU LAW—Debts.

ness. (*Rangnekar, J.*) VISHWANATH GANSHET v.
RAGHUNATH GANU. 40 Bom.L.B. 458=
176 L.C. 830=11 B.B. 50=A.I.R. 1938 Bom 344.

NARAYAN v CO-OPERATIVE
MALKAPUR

178 I O. 293-1938 N.L.J. 82.

Debts—Father—Speculative transaction—Liabi

creditor can get a decree directly against the assets it must be shown that the guardian has a right of indem-

is limited on the joint family, being for the benefit of the family. (*Stone, C. J. and Vivian Bose, J.*) **GANGARAM CHOTURAM v. CHAPSI KUWARIEE.**

A.I.R. 1938 Nag. 431.

—Debts—Guardian—Testamentary guardian authorized to carry on business of minor—Promissory note by—Liability of minor—Creditor's right of direct recourse.

for his own urgency for purchasing land—No rental that he was manager or that purchase was for family—Subsequent partition—Property purchased divided among members—Liability of family for debt.

The first defendant who was the elder brother of defendants 2 and 3, all of them being members of a joint Hindu family, executed a promissory note to the plaintiff on 23-4-1919 which recited that the amount

minor also

run the business, was entitled as against the minor beneficiary to be indemnified out of the assets of the

—Debts—Manager—Promissory note or hundi
executed by—Suit on—Liability of other members of

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HINDU LAW—Debts.

to make all the members of the family liable is that the debt should have been contracted for family necessity or for the benefit of the family. There is nothing in the Negotiable Instruments Act which precludes a Court from applying the principles of Hindu Law to a suit based on a negotiable instrument. All the members of a joint family are therefore liable to be sued on a promissory note or hundi executed by it provided it is established that the debt was incurred under the instrument for joint family purposes. *Courtney Terrell, C. J. and Fazl Ali, PRASAD v. BINUA PRASAD SINGH.*

Debts—Promissory note by father and eldest son—Death of father and endorsement by junior sons—If eldest son converted son. *See S. 20. 1938 M.W.N. 981—48 L.W. 452.*

partnership has to be regarded as an extension of the

In the absence of proof by plaintiff creditor that the acknowledgment was made on behalf of and with the authority of those other members, it binds only the persons making it. (*Beasley, C. J.*) *NARAYANA IYER v. NARAYANA IYER 1937 M.W.N. 1312*

Right of Widow—Money borrowed on behalf of

Money borrowed for financing of temple under construction—If for legal necessity.

In a suit upon a hand-note executed by a Hindu widow against the reversioners succeeding to the estate, on the ground that it was executed for necessity, to prove the mere nature of the purpose for which the money is

HINDU LAW—Family arrangement.

on the reversioners to the estate. (*Courtney Terrell, C. J. and Madan, J.*) *RAMSEWAK MISRA v. JANUNA PRASAD SINGH. 173 I.C. 24=1937 P.W.N. 835=10 R.P. 329=11 Pat. L.T. 810=A.I.R. 1937 Pat. 667.*

Family arrangement—Declaratory suit by rever-

the plaintiff's suit and the plaintiff's suit at a time when no one contemplated that an Act would be passed

Family arrangement—Dispute between widow and brother of last male-holder—*Ekarnama* executed by widow, brother and daughter of deceased—Validity as against daughter—Right of latter to impeach as invalid after widow's death—Alienation by widow—

widow applied one half of the property of the family and prayed that her share should be mutated as regards the absolute ownership of the property. This was ordered. This was ordered on the family, who afterwards an *ekarnama* was executed by the widow,

HINDU LAW

HINDU LAW

—Gift in favour of Hindu estate or absolute estate—
kshis patra—Provision that
erty perpetually and as the
उप भोगदाता—If import
—Law in Bombay—

Lall, J.J.) **RANPEYARI KUER v. RANDHANI SINGH**
1938 P.W.N. 125 = A I.R. 1938 Pat. 476
—Family arrangement—Validity—Arrangement
between some members of family.

Even though some members of a family do not join a family arrangement, the arrangement will still be a family arrangement and will be binding on those who

be drawn in the case of a gift in favour of a Hindu widow or other female that the donor does not intend to confer an absolute estate. In Bombay, sisters and daughters do take absolute interests even by inheritance, and it would not be reasonable, merely because the donee happens to be a female, to start with a presumption in favour of the gift or transfer being limited. Merely because the purpose of a document

1938 O L.R. 157 = 1938 O A. 259 =
10 N O. 216 = A I.R. 1938 Oudh 110.

—Family arrangement—Validity—Conditions.

The arrangement to be a valid family must be one concluded with the object of *fide* a dispute arising out of conflicting cl perity, which was either existing at the likely to arise in future. *Bona fide* is the validity, and from this it follows that there must be

in adoption by the senior widow of a deceased Hindu with the concurrence of the junior widow executed in favour of the junior widow a deed of gift, which was

property and that he gave her in her possession by way of gift. He was not drunk and with my full knowledge and of my

tially one to which the formal assent of the members of the family and the members of the governing body was taken, for the purpose of curir settlor to revoke what he had done does not constitute a family arrang Cal. 600 Foll. (*Ahuudkar, J.*)
v. ASHMANTARA DEBI

—Family arrangement—Val
Claims made—If to be just.

It is not necessary that a family valid, must evidence just claims; even though the claims might, if founded (*Abdul Ghani and Singaravani Ahuudkar, J.J.*) **KITTAMNA v. SESHAMNA**. 43 Mys H O B. 43 =

16 Mys L J. 232

—Family settlement—Existence of—Property admittedly belonging to one of parties allotted to other—Ownership, if transferred—T. P. Act, S. 123.

The essence of a family settlement is a mutual recognition of a pre existing right settlement. A transaction by which admitted title to which rests in transferred to one of the other within the definition of a family that *qua* that property there a ownership. But the transfer is registered and duly signed ana under S 123 of the T P Act. **WAJID ALI v. G.**
1938 O L.R. 122

(*Zia ul-Hasan, J.*)

suggesting that the deed was made only with a view to make a provision for maintenance and as therefore conferring only a limited estate; that since the words "for maintenance" were not found in the gift deed itself no oral evidence should be allowed to have the effect of introducing those words in the document; and (4) that

Where there is no evidence as to the nature of a gift there is no either on who fail for

want of proof. (*Jack, J.*) **MANYAMOVI DASI v. SAUDANINI DEBI**. 42 C.W.N. 1053.

—Gift—Validity—Delivery of possession—If necessary

Under Hindu Law, a gift is not valid unless it is accompanied by delivery of possession. Where the

—Gift.
Construction.
Nature of estate.
Validity.

—Gift by adopted son in favour of Hindu Widow
—Absence of words of limitation—Effect—Estate conferred. See TRANSFER OF PROPERTY ACT, SS. 8 AND 122.
39 Bom. L.R. 1217.

HINDU LAW—Gift.

donor, who is in possession at the time of making the gift, does not deliver possession of the property to the donee.

10 R.N. 274—A.I.R. 1938 Nag 142.

Gift—Validity—Gift in favour of deity not in existence.

The principle of Hindu Law which invalidates a gift other than to a sentient being capable of accepting it does not apply in a bequest to a trustee for the establishment of an image and worship of a Hindu deity after the testator's death, nor does it make such a bequest void. Further no distinction can be made between a bequest for religious purposes and a gift *inter vivos* for identical purposes. Nor is it necessary that the gift must be to trustees as distinct from Thakur not yet brought into being, as the interposition of trustee has nothing to do with the question (*Akhandkar, J*)

BHABATARINI DEBI v. ASHMANTARA DEBI

A.I.R. 1938 Cal. 490.
Guardianship—Alienation by guardian—Validity of—Discharge of binding debts—No pressure on the estate.

Where the guardian of a minor alienated some of his properties to discharge the debts binding on him but there was no pressure on the estate from the creditors the price paid was a fair one and the deed

Held, that the alienation is valid as a minor (*Venkatasubba Rao and Adu*)

General recognition by family of minor—Power to give discharge of debt due to minor.

A *de facto* guardian is one who is already a guardian owing to something which has happened previously. Where a person, who makes an alienation or receives a payment, is, at the time, common consent, in the and those interested in person who is entitled that person so recognised has consented to act as guardian, that person is a *de facto* guardian and it is not necessary to wait for a series of transactions in the capacity of guardian in order to clothe that person with authority to represent the estate of the minor. 51 Bom 1040 and 55 M.L.J. 861, Ref guardian who is validly in charge of the affairs may, for the benefit of that discharge in respect of a debt. A.I.R. 1937 Mad. 780, Diss. ft J) HANUMAYAMMA v. LAKSHMI

48 L.W. 506—A.I.R. 1938 Mad 950—(1938) 11 M.L.J. 632.

Guardianship—Step-mother and aunt—Competence to choose.

Where both the aunt and step-mother of a minor boy of 11 years claimed to be appointed as his guardian; it was held that the step-mother's interests were adverse

HINDU LAW—Joint Family.

Ancestral property.

Business.

Capacity to join co-operative society.

Constitution.

Coparcener.

Decree against father.

Decree against member.

Joint property.

Manager.

Presumption of Jointness.

Self acquisitions.

Suit for partition.

Survivorship.

Alienation.

Benefit.

Binding nature.

Father.

Manager.

Member.

Setting aside.

Joint family—Alienation—Benefit of the estate—Test—Considerations.

It is impossible to give a precise definition of the expression "benefit of the estate" applicable to all cases. Whether or not a particular transaction is beneficial will depend on the particular circumstances of each case. The purpose of a loan may be necessary; yet the debt

benefit of the family. (*Stone, C.J. and Nayaga, J.*)

GANPATRAO v. ISHWAR SINGH.

A.I.R. 1938 Nag. 482.

Joint family—Alienation—Binding nature—Difference between mortgage and sale.

A mortgage and a sale transaction stand on a different footing. A sale is either wholly good or bad; a mortgage of being supposed that part of part would be

GANPAT RAO

v. ISHWAR SINGH.

A.I.R. 1938 Nag 476.

Joint family—Alienation—Duty of lender—Proof of necessity—Coparceners not contesting suit—If entitles lender to decree.

Where a manager of a joint Hindu family borrows money to make

the family to make before he and that may not little the facts mentioned above. The Court has to be satisfied about these before a decree is passed. (*Misra, J.*)

RAM KRISHNA DAS v. NIMAI BHAR.

1938 A.L.J. 1049—1938 A.W.R. (H.C.) 760.

Joint family—Alienation—Father—Mortgage to purchase lands—Mortgage knowing purpose of mortgage—Mortgage, distinct transaction from sale—Antecedent debt—Mortgage, if binding on the sons of mortgagor.

A father of a joint Hindu family purchased property A and as he had not sufficient money to pay for the whole of the consideration, he mortgaged certain other family property B along with the newly purchased property A, to raise money for the sale. The vendor had nothing to do with the mortgage and the mortgagee had

HINDU LAW—Joint Family.

nothing to do with the sale, except that he knew that the purpose of the money advanced by him, was to pay off the vendor of A.

Held, that the mortgage and sale do not am

—Joint family—Alienation—Manager—Fact to be shown by lender—Necessary purpose and need for loan.

For an alienation by manager to be valid, what to be shown is that the loan is for legal necessity, that the money is wanted, or is stated to be wanted, and enquiries confirm that want for a necessary purpose. The difference is important. Where the manager has, to the knowledge of the lender, large available resources, and actual cash at hand, he cannot bind the estate if he borrows ostensibly to pay land revenue. The purpose is necessity, but there is no necessity for the loan, where there are apparently large resources, a large income and an unencumbered estate. The lender must show a necessary purpose but a necessity for the after reasonable enquiries he is a necessary purpose.

—Joint family—Alienation—Manager—Ratification after majority—No communication to alienor.

A manager of a joint Hindu family way of mortgage which was not for family. In a subsequent agreement am this debt was admitted by them but the not communicated to the mortgagee.

Held, that the agreement did not amount to ratification of the mortgage debt by the other brothers. There could be no ratification of a contract unless it is communicated to the other side or that subsequent actions show an approbation of the contract. (Stone, C.J. and Niyogi, J.) **GANPATRAO v. ISHWAR SINGH.**

A.I.R. 1938 Nag 482.

—Joint family—Alienation—Manager—Ratification after majority—Requirements.

during their minority by a managing member of a joint Hindu family there must be communication to the alienor by the ratifiers before the act becomes irrevocable. (Stone, C.J. and Niyogi, J.) **GANPAT RAO v. ISHWAR SINGH.**

A.L.R. 1938 Nag 476.

—Joint family—Alienation by member—Right of alienor—Suit for partial partition.

A purchaser of a small portion of the joint family property from one of the members of the family, decree his suit if the prejudiced or income (J.) **TARINI CHAR. LAL DAY.**

HINDU LAW—Joint Family.

—Joint family—Alienation—Settling aside—Long lapse of time—Value of recital in conveyance—Pre-

recital in the conveyance.

over 40 years—except the

(1938) 1 M.L.J. 157.

—Joint family—Ancestral property—Joint family property—Coparcener getting title by adverse possession by excluding other coparceners—If self-acquisition of that coparcener—Sons of such person—If acquires right by birth.

Joint family property to which a coparcener obtains title by adverse possession by excluding his other coparceners does not thereby become his self-acquisition in the

ancestral property and the title of coparceners in it

(J.) **SURESHCHANDR.**

C. 820 = 10 R.B. 493 =

Manager.

Member carrying on business.

Nature of.

New business.

New venture.

Partnership.

Pronote by karta.

—Joint family—Business—Agricultural operations—If trade.

A.I.R. 1938 Nag 65.

—Joint family—Business—Ancestral business—What is—Sons born after starting of business—Liability.

A business started by a manager of a joint Hindu family cannot be regarded as ancestral. The fact that certain minor members were not born at the time when the business was started, was held not to make any

HINDU LAW—Joint Family.

nothing to do with the sale, except that he knew that the purpose of the money advanced by him, was to pay off the vendor of A.

Held, that the mortgage and sale do not amount to one transaction, the mortgage money was raised to
 "FARI-
 465.

—Joint family—Alienation—Manager—Facts to be shown by lender—Necessary purpose and necessity for loan.

For an alienation by manager to be valid, what has to be shown is that the loan is for legal necessity, not that the money is wanted, or is stated to be wanted, and enquiries confirm that want for a necessary purpose. The difference is important. Where the manager has, to the knowledge of the lender, large available resources, and actual cash at hand, he cannot bind the estate if he borrows ostensibly to pay land revenue. The purpose is necessary, but there is no necessity for the loan, where there are apparently large resources, a large income and an encumbered estate. The lender must show a necessary purpose but a necessity for the after reasonable enquiries, he, as a reasonable satisfied of that necessity, that is sufficient;

—Joint family—Alienation—Benefit to estate—Admission of debt—Inter se—No communication to alienee ratification.

A manager of a joint Hindu family way of mortgage which was not for family. In a subsequent agreement among the brothers this debt was admitted by them but the agreement was not communicated to the mortgagee.

Held, that the agreement did not amount to ratification of the mortgage debt by the other brothers. There could be no ratification of a contract unless it is communicated to the other side or that subsequent actions show an approbation of the contract. (*Stone, C.J. and Niyogi, J.*) **GANPATRAO v. ISHWAR SINGH.**
A.I.R. 1938 Nag. 482.

—Joint family—Alienation—Manager—Ratification after majority—Requirements.

during their minority by a managing member of a joint Hindu family there must be communication to the alienee by the ratifiers before the act becomes irrevocable. (*Stone, C.J. and Niyogi, J.*) **GANPAT RAO v. ISHWAR SINGH.**
A.I.R. 1938 Nag. 476.

—Joint family—Alienation by member—Right of alienee—Suit for partial partition.

A purchaser of a small portion of the joint family property from one of the co-owners can sue for partition only of the land purchased by him, and the Court can decree his suit if the parties would not be in any way prejudiced or inconvenienced thereby. (*Syed Naim Ali, J.*) **TARINI CHARAN CHAKRABORTY v. DEBENDRA LAL DAI.**
68 C.L.J. 114.

HINDU LAW—Joint Family.

—Joint family—Alienation—Setting aside—Long lapse of time—Value of recitals in conveyance—Presumption to fill in details—Permissibility.

Where an alienation made by a step-mother over 40 years ago is questioned on the ground of want of necessity and where there is no evidence at all except the recital in the conveyance,

Held, that in such a case, recitals could be taken into consideration and further it was open to the Court to make presumptions to fill in details which have been obliterated by time. (*Leach, C.J. and Venkataramana Rao, J.*) **VENKAYAMMA v. SITARAMARAJU.**
173 I.C. 851=10 R.M. 664=
1938 M.W.N. 1126=48 L.W. 800=
(1938) 1 M.L.J. 157.

—Joint family—Ancestral property—Joint family property—Coparcener getting title by adverse possession by excluding other coparceners—If self acquisition of that coparcener—Sons of such person—If acquires right by birth.

Joint family property to which a coparcener obtains title by adverse possession by excluding his other coparceners does not thereby become his self acquisition in

Business.

Agricultural operations.

Debts.

Manager.

Member carrying on business.

Nature of.

New business.

New venture.

Partnership.

Pronote by karta.

—Joint family—Business—Agricultural operations—If trade.

A.I.R. 1938 Nag. 65.
 —Joint family—Business—Ancestral business—What is—Sons born after starting of business—Liability.

A business started by a manager of a joint Hindu family cannot be regarded as ancestral. The fact that certain minor members were not born at the time when the business was started, was held not to make any difference. It is only with regard to a debt incurred for an ancestral business that the minor members of a joint Hindu family or their shares in the joint family property are liable. (*Wart and Manohar Lal, J.J.*) **GANPAT RAI MARWARI v. SUKHEDEO RAM.**
174 I.C. 218=
10 R.F. 490=4 R.R. 404=A.I.R. 1938 Pat. 335.

HINDU LAW—Joint Family.

regarded as members of the joint family. mess, the common worship, the com-
 plished with ties of blood and intro-

She not only continues to be a member of her father's family, but she introduces into that family others who, in normal

finned to the heirs of the person who started it, but includes his daughter who was a continuing member of his family, or his *gharjamas* who by marriage was introduced into the family. It would satisfy every legitimate test of a joint family business, if the business is

Joint family—Business—Debt—Debt contracted by manager—Extent of liability of other members.

Where debts are contracted by manager of a joint Hindu family, the other coparceners are liable not personally but only to the extent of their interest in the

HINDU LAW—Joint Family.

principle of "hold-
 resulting from that
 junior member of a
 take any interest in
 the absence of proof
 ticipation as would
 of coparceners in
 ra' in the business.

concern, debts incurred in connexion with the business will take preference over the right of a widow to maintenance. No question arises in such circumstances as to

creditor having notice
 course the condition
 have been genuinely
 ie or business of the
 family and the transaction should not be tainted with
 fraud. (*Almond, J.C. and Mir Ahmad, J.*) MT,
 HOWANI 841 v. DEVI DIAL. 177 IC 1005—
 A.I. 1938 Pesh. 68.

Joint family—Business—Manager admitting
 and liability

ily admits a
 e other mem-
 business till
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 'RY ■ TARA
 'E, 519 (2) =
 10 R.P. 570—1938 P.W.N. 547—19 Pat.L.T. 511—
 A.I.R. 1938 Pat. 877.

Joint family—Business—Manager—Representa-
 tive capacity of—Promissory note in favour of—Suit on
 —Right of manager and of individual members. See
 MYSORE C. P. CODE REGULATION, O 30.

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 J.J.)

714.
 Joint family—Business—Nature of—Family
 trading partnership and ordinary partnership—Dis-
 tinction

A joint Hindu family trade is a species of ancestral joint property in which every member of a Mitakshara joint family acquires by birth an interest in the same way as in other kinds of property. They become not only coparceners but also co partners of the trading firm. A joint family trading partnership appears to differ from ordinary partnership in two respects, namely, (i) it is not dissolved by the death of any member, and (ii) a member of the family becomes a co-partner by operation of law. (*Costello, A.C.J. and McNair, J.*) LALA BAIJ NATH PRASAD v. RAM GOPAL LACHMI NARA YAN. I.L.R. (1938) 1 Cal. 369.

Personal liability of.

It is unreasonable to insist that the adult members of a joint Hindu family should take no interest whatever in the family business on paying of becoming personally liable for all the transactions entered into by the managing member under the Hindu Law, their share in the family property is undoubtedly liable for the liabilities incurred by the manager. It is not uncommon for junior members in a family to take an active part in the supervision of the family property. But it does not follow that the participation by an adult member of the family in the business of collection of outstandings due in the family involves him in personal liability for family debts borrowed by the manager. A distinction may arise, so far as participation in trade is concerned,

HINDU LAW—Joint Family.

Joint family—Business—New business started by father—Debt incurred in—Liability of sons.

When the business of a joint Hindu family to finance which money has been borrowed in a new business and not an ancestral business, the sons are not liable for the payment of the loan contracted by the father for that business, unless the transaction was for the benefit of the family or to the benefit of the estate or it was supported by legal necessity. If, for instance, ancestral property has ceased to be remunerative, and there is no way of maintaining the family except by alienating that property and investing the proceeds in some business, the alienation can be upheld as one for valid necessity (*Bhide and Beckett, J.J.*) **PRABH DAVAL v. BASANT LAL**, 40 P.L.R. 678—A.I.R. 1938 Lah. 622.

Joint family—Business—New business started by father—Son participating in it—Money borrowed for business—Charge on family property.

If a son after attaining majority participates in the business newly started by his father, he must be taken to have accepted it as a family business, and the money borrowed for the business is chargeable on the family property (*J.J.*)

manager—Mortgage of family property to finance venture—If binding on all members—Tests.

The power of the manager of a joint Hindu family to enter into transactions for the support of the family and to start new ventures is to be judged (when in exercise of such power the family property is charged or alienated by the manager) by the consideration whether that

by the manager to finance the members of the family whether the venture or not, provided a prudent manager would undere in fact required to finance the venture. (*Varma, J.J.*) **CHHOTAY LAL CHAUDHURY v. DALIP SINGH**, 1938 P.W.N. 846.

Joint family—Business—P.Suit by creditor against family—Plaint that he has separated and therefore burden of proof.

In a suit to recover from a Hindu joint family firm money borrowed under a promissory note executed by the karta the plaintiff who seeks to charge the joint

HINDU LAW—Joint Family.

Joint family—Capacity to become member of Co-operative Society.

A Hindu joint family can be a member of a Co-operative Society. (*Horwill, J.*) **VILLUPURAM URBAN CO-OPERATIVE BANK v. BALASUBRAMANIAM MUDALI**, 1938 M.W.N. 567=43 L.W. 285—A.I.R. 1938 Mad. 809—(1938) 2 M.L.J. 166.

Joint family—Constitution—Rights of members.

Joint family consists of males and females who constitute a sort of corporation, some members of which are entitled to demand a share at a partition while others are only entitled to maintenance. Their rights spring from their being gotraja sapinda. A joint family may consist of surviving female members only. (*Stone, C.J. and Niyogi, J.*) **MST. DRAUPADI v. VIKRAM**, 1938 N.L.J. 237—A.I.R. 1938 Nag. 423.

Joint family—Coparcener—Death of—Others, if his representatives—Nature of rights of members.

A member of a joint Hindu family is in no sense a representative of a deceased member. When one

177 L.C. 610=4 B.R. 500 (1)—L.A. 111, 112.

Joint family—Coparcener—Decree against member—Decree if binding only upon defendant or upon joint family—Question of fact—Proper course—Withholding of costs for failure to do so.

It is a question of fact to a large extent whether a member of a joint Hindu family is bound upon partition to contribute towards the costs of the partition suit. (*Stone, C.J.*) **CHHOTAY LAL CHAUDHURY v. DALIP SINGH**, 1938 P.W.N. 846.

pates. The High Court is entitled to withhold costs from litigants who necessitate a number of actions instead of one. (*Stone, C.J.*) **CHHOTAY LAL CHAUDHURY v. DALIP SINGH**, 1938 P.W.N. 846.

Joint family—Coparcener—Decree against—Execution sale—4th share of property sold when coparcener's share was only 1/4th—Title of purchaser.

A decree against a coparcener in a joint family suit does not bind the other coparceners. (*Stone, C.J.*) **CHHOTAY LAL CHAUDHURY v. DALIP SINGH**, 1938 P.W.N. 846.

HINDU LAW—Joint Family.

Singh, J.) NANAK CHAND v. GANDU RAM.
177 I.O. 746—11 P. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

—Joint family—Co-

coparcener after date of

tion to joint property.

If the income received

of disruption relates to a

would be treated as an ac

joint family property and

for it, A.I.R. 1916 Cal. 500, rel on. (*Addison and*

Din Mohammad, J.J.) SHANKAR DAS v. OFFICIAL

RECEIVER A.I.R. 1938 Lah. 328.

—Joint family—Coparcener party to litigation—

Death during pendency—His son added—Compromise

decree—Disappearance of that son—His eldest son, if

can execute compromise decree.

Where a member of joint Hindu family died during

the pendency of a litigation to which he was a party, his

son was brought on record in his place and a compromise

decree is passed, and a portion due was realised and

where after the son so added disappeared, his eldest son

as the manager of the family is entitled to apply for the

execution of the decree for the balance due. (*Bennet,*

A.C.J. and Co., J.J.) SHANKAR DAS v. OFFICIAL

RECEIVER A.I.R. 1938 Lah. 328.

—Joint family—Coparcener—Right to renounce

interest in part of joint family property.

There is no authority that a coparcener can renounce

his interest in part of the joint family property in

favour of one or all other coparceners. (*Addison and*

Din Mohammad, J.J.) MT. TULSI BAI v. HAJI

BAKHSI, 177 I.O. 422 (2)—11 R.L. 318—

40 P.L. 738—A.I.R. 1938 Lah. 478

—Joint family—Duties of coparceners—

manager after partition

raises no objection whatever, the son who was not a

party to the deed, can challenge it.

though initially the grant was the separate property of

of joint family

the other co-

granted to the member for himself and not as repre-

senting the family or for the benefit of the family, the

family cannot claim the property as belonging to it. If

the heirs of the grantee subsequently enlarge the nature

of the tenure by reason of a resolution of the Govern-

ment transferring the lands on full occupancy tenure,

the heirs so getting full occupancy tenure cannot be

treated as holding the property in a fiduciary capacity

granted to the member for himself and not as repre-

senting the family or for the benefit of the family, the

family cannot claim the property as belonging to it. If

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granted to the member for himself and not as repre-

senting the family or for the benefit of the family, the

family cannot claim the property as belonging to it. If

the heirs of the grantee subsequently enlarge the nature

of the tenure by reason of a resolution of the Govern-

ment transferring the lands on full occupancy tenure,

the heirs so getting full occupancy tenure cannot be

treated as holding the property in a fiduciary capacity

HINDU LAW—Joint Family.

property by succession as his heir. A coparcener does

not have a right to demand partition.

—Joint family—Coparcener—Right to renounce

interest in part of joint family property.

There is no authority that a coparcener can renounce

his interest in part of the joint family property in

favour of one or all other coparceners. (*Addison and*

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RECEIVER A.I.R. 1938 Lah. 328.

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RECEIVER A.I.R. 1938 Lah. 328.

HINDU LAW—Joint Family.

and for the benefit of the family, within the meaning of S. 90 of the Trusts Act, read with III. (b) to that section (*Rangnekar, J.*) **DATTATRAYA SITARAM v. SHANKAR.**

40 Bom L.R. 118=175 I.O. 434=10 B.B. 569=
A.I.R. 1938 Bom. 250

Joint family—Joint or separate property—Property acquired by coparcener out of his separate income.

A member of a joint Hindu family can acquire property for himself out of his own separate income, and it is his own separate property unless it is proved that such member has blended his income with that of the other members of the family.

the joint family did not sign the agreement, nor the fact that the manager did not state that he possessed separate property.

1938 A.L.R. 615=A.I.R. 1938 All 414.

Joint family—Manager—Loan by firm out of funds of family—Suit in our name for recovery—Maintainability in the absence of statement that suit is on behalf of family—Contract Act, S. 230.

who does not disclose the nature of the transaction to the other members of the family.

Joint family—Manager—Position of—Liability to account.

A manager of a joint Hindu family is not the agent of the family.

from the Tahsildar

HINDU LAW—Joint Family.

tion is that all property held by any member is held as a member of the family and not as an individual. (*Stone, C.J.*) **SHER MOHAMAD KHAN v. RAMRATAN GANESHIRAM TELI.**

I.L.R. 1938 Nag 233=

173 I.C. 572=10 H.N. 309=A.I.R. 1938 Nag 87.

Joint family—Presumption—Punjab.

There is an initial presumption that a Hindu family is joint in estate and that where a joint Hindu family owns ancestral property which has not been partitioned, the presumption is that all the property possessed by the members is joint. In Punjab however the fact that the

and is not inconsistent is usual to find Hindu taken place without have separated with-deed. The sons go one or two perhaps thers start new trades rvice, yet there is no

partition, no drawing up of deeds of any kind, a certain

Joint family—Promissory note by manager—Indorsement—Right of indorsee to proceed against other coparceners not parties to the note. See, NEGOTIABLE INSTRUMENTS ACT, SS. 27, 28 AND 32.

1938 M.W.N. 238=47 L.W. 309=

(1938) 1 M.T.J. 378 (F.B.).

show how he his own out of hat nucleus has have been the tion, or where oled in other ways, then the fair inference will be that the acquisition is acquired apart from it, i.e., as self-acquired. This does not mean that the nucleus must be of such a kind to so much property or money that it can : turned into the property in question. If the shown to be a businessman deriving his

(*Stone, C.J.*) **SHER MOHAMAD KHAN v. RAMRATAN**

233=

g. 87.

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60

HINDU LAW—Joint Family.

the ancestral funds went towards the purchase of those properties. On a contention by the son that the properties so acquired were joint family properties inasmuch as they were acquired with the nucleus of the ancestral funds.

Held, that the mere proof by the son that he had a nucleus of ancestral property shifted the burden on to the other side. Subsequently acquired properties were private earnings. To shift the burden it would have to be further proved that the ancestral property was such, that by its means, the subsequently acquired properties might have been purchased.

Held, further, that the plaintiff's claim for profits was a personal claim.

—**Joint family—Suit for**
—**Effect of filing of written**
Liability to account—Principle

Where a written statement and possession contains an agreement to separate, it may be taken in the same manner as a plaint in the written statement may among the members inter constitute the parties to the division in status of members stated. In the absence of conduct the only account the family is liable to render is the property divisible and the Court must be in the manner of discovery of what the family property in fact consists of. *Mayne's Hindu Law*, 9th Edition, page 470, Rel. on. (Venkatasubba Rao and Venkatararamana Rao, JJs.)
SWAMINATHA ODAYAR v GOPALASWAMI ODAYAR.
1938 M.W.N. 1214 = (1938) 2 M.L.J. 704

—**Joint family—Survivorship—Widow and unmarried daughters of deceased co-parceners—Right to maintenance and marriage expenses from property in hands of surviving co-parcener—Nature of—Right to**

surviving co-parceners. The latter taking by survivorship takes it subject to the widow and unmarried daughters' marriage expenses right to maintain the property taken right is an interest defeated by an agreement under S. 88, C. parcener who at all times was always entitled to create a formal charge to be attached to S. 88, Cr. P. Co. the absconder's (Dattatraya, J.)

11 B.B. 41—40 Bom L.R. 422—
A.I.R. 1938 Bom. 321.

—**Limited owner—Position of—Daughter realising**

HINDU LAW—Maintenance.

decree for arrears of profits—Restitution—Estate, if liable for.

It is true that a widow or other limited heir is not a tenant-for-life but is owner of the property held by her subject to certain restrictions on alienation and subject to the obligation to maintain the family.

claimants and she has absolute power of disposal of the income of the property inherited by her. She is not bound to save any portion of the income and she can spend the whole of it upon herself as she sees fit.

held, that her claim for profits was a personal claim.

capacity and she had to refund it in her personal capacity. (Thom, C.J., Bapoor and Mahomed Ismail, JJs.)

A.I.R. 1938 All 426 (F.B.)

—**Maintenance—Daughter in law—Right of as against father-in-law's self-acquired property—Suit in absence of ancestral property pending suit—Effect—Decree in suit as against legal representatives**

There is no authority for holding that whenever a minor daughter in law is widowed she has a right to

—**Maintenance—Persons entitled to—Daughter-in-law—Right of against self-acquired property of father-in-law in the hands of donee or devisee by will.**

HINDU LAW—Maintenance.

A widowed daughter in law under the Hindu law has no legal right to maintenance from her father-in law out of his self acquired property but only what is called a moral right, but it on her father-in law's death that property descends by inheritance to his heirs, her moral right becomes a legal right at the moment of his death as against them and as against the property which they have so inherited. She has no such legal right against a devisee or donee of the self acquired property of her father-in law or against the property itself if it is disposed not by inheritance.

Stodart, J.J.

Maintenance—Persons entitled to—Illegitimate son of Hindu coparcener of joint sect—Right to maintenance from father's share of joint family property—Amount of maintenance—If limited to bare necessities of life.

Under the Mitakshara school of Hindu Law an illegitimate son of a deceased joint coparcener (who is a member of the twice-born or regenerate classes), who has died in union and without leaving any separate property is entitled to receive maintenance out of the joint family estate which has passed by survivorship to his putative father's coparceners. It is not necessary that the mother of the illegitimate son should have been a दलित or continuously kept concubine of his father. There is no justification for holding that the maintenance awarded should cover only the bare necessities of life. The expression जीवन् मास, in Ch. I, S. 12 verse 3 of the Mitakshara has no reference to the amount of maintenance. It must be taken to mean no more than that the illegitimate son gets maintenance merely as distinguished from a share. (*Broomfield and Macklin, J.J.*)

HIRALAL v. MAGHKAJ.

178 I.C. 311—

40 Bom L.R. 937—A.I.R. 1938 Bom 433

arrears—Power of Court to grant.

The right to maintenance under the Hindu Law does not depend on contract, but is a peculiar right, and the rate of maintenance though fixed by agreement of parties or by a decree of Court may be varied or altered

for life" at a particular rate cannot be held to be a release of the right of any party to claim an alteration of the rate on the ground of a change. Where the rate has been fixed by or by a decree of Court, it is not should be a suit by the party claiming the purpose; the party bound to pay maintenance can get the rate altered in suit by the other party for maintenance. When the rate has been fixed by a decree, the proper procedure to get the rate altered is by a suit, unless the decree itself contains provision for alteration of its terms, in which case for that purpose in execution, the rate can be granted not merely from the date on which the plea is raised, but in respect of arrears of maintenance as well. (*Abdul Ghani and Singaravelu*

HINDU LAW—Maintenance.

Mudaliar, J.J. NANJAMMA v. VISWANATHIAH.

16 Mys L.J. 63—42 Mys H.C.R. 699.

Maintenance—Widow—Amount—Determination—Facts to be taken into account—Family debt—Arrears—Rate—Discretion—Interest on arrears—Practice.

In arriving at the figures of maintenance to be allowed to a Hindu widow, the Court should take into account the debts with which the family is burdened. Where the

share and separates from the family but the rest of the family remains joint, the widow is entitled to maintenance from the whole of joint family and not merely from the income of the property allocated to her adopted son as the share of his adoptive father at the time of the determination of the share of the brother who has separated. The widow is, under the circumstances of the case, entitled to be treated generously in the matter of maintenance. The arrears of maintenance to be awarded to the widow need not necessarily be at the same rate at which the Court has fixed the future maintenance and may be at a lesser rate. The Court has discretion in the matter. As regards the interest to be awarded on the arrears of maintenance, the Court should follow the usual course in such matters and should allow the Court rate of interest from the date of decree (*Stone, C.J. and Niyogi, J.*) *SHRIDHAR BHAGWANJI v. SITABAI.* I.L.R. 1938 Nag. 289—177 I.C. 739—11 B.N. 168—A.I.R. 1938 Nag. 198.

Maintenance—Widow—Charge—Extent of properties to be charged.

It is unreasonable to give a Hindu widow a charge over the whole of the joint family properties for her maintenance. The charge should be limited to the pro-

inten-
MMA.
618—
822.

Maintenance—Widow—Claim for enhancement—Arrears at enhanced rate—Date from which enhanced rate to be awarded.

In a suit by a Hindu widow for enhancement of the rate of maintenance, the Court should award the enhanced rate from the date when the demand was first made.

Maintenance—Widow—Decree declaring right to

Maintenance—Widow—Income from her personal exertions—If constitutes means.

After a decree has been passed in favour of a widow for maintenance, the amount so decreed cannot be withdrawn if the widow happens to make her own living exertions, because her income by personal exertions is not to be taken as her 'means'. (*Addison and Din Mohammad, J.J.*) *JAI RAM v. MT. SHIV DEVI.* I.L.R. 1938 Lah. 352—177 I.C. 539—11 B.L. 334—A.I.R. 1938 Lah. 314.

HINDU LAW—Maintenance.

—Maintenance—Widow—Joint family—Liability if can be against individual members.

Where in a suit for maintenance by a widow, the family has been found to be joint in all material times, both costs and maintenance are payable from joint family and not by any individual member. (*Stone, C. J. and Niyogi, J.*) **SHRIDHAR BHAGWANJI v. SITARAI**, I.L.R. 1938 Nag. 289=177 I.O. 739=11 E.N. 168= A.I.R. 1938 Nag. 198.

—Maintenance—Widow—Rate awardable for enhancement of rate—Considerations for deciding.

The maximum amount of maintenance of widow would be the amount of the income of which her deceased husband would have been entitled had been alive and a coparcener at the date of the suit. In a suit for enhancement of maintenance by a widow who already holds a decree in her favour for maintenance at a certain rate, the Court cannot proceed to fix the maximum without any regard to the judicial decision already passed and binding on both parties. The only grounds upon which that decision can be said to lose its force are such changes in the circumstances governing the widow and the family as were not foreseen and allowed for at the time when the prior decree was passed.

any reasonable changes in the conventional necessities improvement in the circumstances which she belongs. The Court must also have regard to

—Maintenance—Widow—Rate of maintenance—Test to determine—Law in Mysore—Mysore Hindu Women's Rights Act—Effect of.

In determining the rate or quantum of maintenance to be awarded to the widow of a deceased coparcener in a Hindu joint family, the provisions of the Hindu Women's Rights Act provide a useful guide in regard to maintenance even in cases in which the Act does not apply. The Act indicates what should ordinarily be regarded as the upward limit, viz., the income of what would have been half her husband's share, if he had been alive and had claimed partition. (*Reilly, C. J. and Abdul Ghani, J.*) **NARASAMMA v. AKKAYAMMA**, 15 Mys L.J. 406.

—Maintenance—Widow—Right against coparceners—Decree for maintenance payable out of joint family—Subsequent partition—Effect—Liability of separated members.

The surviving members of Hindu joint family are bound to maintain the widow of their deceased coparcener out of the joint family funds and if a partition is effected after the death of the widow's husband without any special provision being made for her maintenance,

family, unless that decree is modified or some arrangement is made for her maintenance.

HINDU LAW—Marriage.

ment is made by contract or otherwise, providing for her maintenance and validly superseding the terms of the decree. (*Reilly, C. J. and Abdul Ghani, J.*) **NARASAMMA v. AKKAYAMMA**, 16 Mys L.J. 408.

—Maintenance—Widow—Right of—Will by husband—Liability of donee.

The right to maintenance possessed by a Hindu widow cannot be taken away by any disposition made by her husband and a donee under a will is bound to provide

ed absolutely to widow and the rest to the mother—Widow retaining the property—If precluded from claiming maintenance—Rate of maintenance—Determination of.

Where a person bequeathed a portion of his property to his wife absolutely and the remainder to his mother and there was no indication in the will that the gift to the wife was made in lieu of maintenance, the question arose after his death about the widow's right to maintenance. It was found that the income she would derive from the property bequeathed to her under the

In the main taken

47 L.W. 146=A.I.R. 1938 Mad. 310=

In a suit by a Hindu widow for enhancement of the rate of maintenance awarded to her in a prior suit, there is no justification for granting to the widow a lump sum of money to pay a pilgrimage for the benefit of the soul of her deceased husband, when it is not apparent that any such expenditure was refused at the time of the prior suit on grounds of lack of funds. Nor is there any justification for allowing her a lump sum for the replacement of utensils which have worn out in the interval between the prior suit and the later suit for enhancement. (*Madhwarth, J.*) **VEERAYYA v. CHELLANIMA**, 1938 M.W.N. 1072=48 L.W. 618=

(1938) 2 M.L.J. 622.

—Marriage

Asura form

Ceremonies.

Contract of betrothal by father of minor.

Gandharva

Presumption as to form.

—Marriage—Asura form—Essentials See MARRIAGE—PRESUMPTION AS TO FORM.

1938 M.W.N. 161.

—Marriage—Ceremonies—Saptapadi—Bride and groom—Seven times—

formance of saptapadi is that the bride and steps. Where therefore round the sacred fire

HINDU LAW—Partition.

can be given thereafter. (*Vivian Bose and Purank, J.*) NARAYAN v. CO-OPERATIVE CENTRAL BANK, MALKAPUR. I.L.R. 1938 Nag 604=

1938 N.I.J. 52=178 I.C. 293= A.I.R. 1938 Nag. 434.

—Partition—Partial partition—Rule against Application of—Suit by alienee from one member of share in one item of property—Suit by—Frame of—Pleas open in other co-partners. See S. 11

—Partition—Presumption as to Allegation of property having been etc as common—Burden of proof.

According to the Hindu Law, a partition once effected is presumed to be complete. If a partition is proved to have taken place, the burden of proof lies on that party who alleges that certain family property was left as common property and excluded at that partition. If that party succeeds in proving that there was only a partial partition, that is sufficient in itself to establish

Once a partition is admitted or proved, the presumption of law is that it is a complete partition, and the burden is on the party who says that the partition was partial to prove it. (*Rangnekar, J.*) DATTATRAYA SITARAM v. SHANKAR 175 I.C. 434=10 B.B. 669= 40 Bom.L.R.

—Partition—Proof, rights.

Under the Mitakshara system of the joint estate

division of necessary

division of the property is not necessary. Once the shares are defined, there is a severance of the joint status and thenceforth (*See Shadi Lal SINGH.* 40 Bom.L.R.

HINDU LAW—Partition.

1938 O.W.N. 727=19 Pat. L.T. 591= 1938 A.L.R. 519=1938 A.L.J. 763=4 B.R. 688= 1938 O.A. 646=175 I.C. 332= A.I.R. 1938 P.C. 189=(1938) 2 M.L.J. 234 (P.C.).

—Partition—Self-acquired property—Registration—Necessity.

Shares in buildings and business which are the self-acquired property of a member of a joint Hindu family other members of the trument. (*Collister and H. v. COMMISSIONER OF I.L.R. 1938 All 638= 1938 F.R. 186=*

177 I.C. 260=

—Partition—Separation of one coparcener—Status of others—Presumption as to—If any—Question as to—Test to decide.

While there can be no doubt that the presumption of union under the Hindu Law cannot continue after the separation of a family, it does not mean that the coparcener the There is no coparcener disposed may not own in separation of the share of the outgoing member. The intention to remain united can be inferred from their conduct even without any express agreement to that effect. The mere fact that the shares of the coparceners have been ascertained does not by itself necessarily lead to the inference that the whole family has separated. There is

decree is passed by consent declaring, inter alia, that the sons of the father by the first wife are to have a

HINDU LAW—Partition.

an end to the joint status of the family. (*Leach, C. J. and Madhavan Nair, J.*) **CHOCKALINGAM CHETTIAR v. MUTHUKARUPPAN CHETTIAR.** 48 L W. 185—1938 M W.N. 810—A I R 1938 Mad 849—(1938) 2 M L J. 756

Partition—Separation—Presumption as to—Separate entries in Khewats in favour of different members—If indication of separation

The fact that there are separate Khewats in the names of different members of a Hindu family cannot raise a presumption that the members of the family are not joint but separate. Such entries and registers cannot be taken to be separation among the members. (*D.*) **RAM PANDEY v. SHYAM DEO NARAI**

Partition—Severance of status—Effect of.

It is clear law that the institution of a suit by a member of the joint family intimating of his intention to separate and that there is consequently a severance of his joint status from the date when the suit is instituted. A decree may be necessary for working out the results of the severance and for allotting definite shares, but the status of the plaintiff as separate in estate is brought into existence by the institution of his right to separate whether consequential decree or not. (*Castillo, McNair, J.*) **LALA BAIJ NATH PR. GOPAL LACHMI NARAYAN.** I L R (1938) 1 Cal 369

Partition—Suit for—Coparcener kept out of possession and enjoyment for long time—Mesne profits—Interest on—Right to be awarded

In an ordinary suit for partition of properties belonging to a joint Hindu family interest will not be awarded on the mesne profits awarded, though under special circumstances the Court may award interest on the mesne profits awarded. Where the coparcener is kept out of possession of his share of the properties for a long period during the pendency of the suit and in the meantime the opposite parties have not only enjoyed the properties throughout but have placed every

(1938) 1 M L J. 439

Religious Endowment

Accretion
Alienation by Mahant
Conversion of debutter property.
Creation of.
Dedication
Devolution of office
Direction to accumulate
Mahant
Alienation by
Installation of successor.
Property acquired by.

Math
Succession to
Shebait

Nomina
Right to

Religious Endowment—If could only be accepted upon donor's terms.

HINDU LAW—Religious Endowment.

An endowment which is an accretion to an already existing endowment.

A mahant has power (apart from any question of necessity) to create an interest in property appertaining to the math which will continue during his own life, or

into secular properties with consent of family members—Validity.

The theory of conversion of debutter properties to secular properties by consensus of the family members has no warrant in Hindu Law and is against Hindu Law.

Religious endowment—Creation of—Book entry by firm crediting certain sum to deity as charity—Money continued to be used in business as before—Trust or endowment—If created.

A Chettiar firm credited in their books of account a certain sum of money to a particular deity by way of charity. That money was used by the firm in their business as before and interest was credited upon it at the

fact, that there was no endowment of any property

Religious endowment—Creation of—Essentials.

According to the Hindu law as administered in British India, the formal religious ceremonies of sankalp and samarpan, though ordinarily performed among the orthodox Hindus, are not essential for the creation of a valid endowment for religious purposes. So long as there is a clear and unequivocal manifestation of intention to create a trust and there is a formal divesting of the ownership in the property on the part of the donor and

public purposes, dedication thereof must be deemed to be complete. The evidence of divestiture may be contemporaneous and the endowment may be created

unequivocal terms that the house in question was set aside for the purpose of being used as a resting place for

HINDU LAW—Religious Endowment.

gentry of the place on that occasion and there made a dedication to the effect that the house had been set aside for the purposes mentioned above.

Held, that in the face of these not being urged that the house was a dedication was bad in the eye of its being indefinite and vague. It was the son of the dedicator of a part of residence and allowing the other portion to be used as a girls' school was counter to the wishes of the settlor and was thus a breach of trust. (*Addison, Ag. C. J. and Din Mohammad, J.*) *JAI DAYAL v. DEWAN RAM.*

40 P. L. R. 954—A. I. R. 1938 Lah. 686.

—Religious endowment—Dedication—Essentials—Construction of deed.

In the case of a dedication to an idol which cannot itself physically hold lands, it is not usual to vest the lands in trustees, that there should be any express words to an idol. No religious ceremony such as a *pan* is necessary, and a clear unequivocal manifestation of intention to create a trust and vesting of the same in the donor or other as a trustee is enough to constitute the dedication. Where the deed ran "I dedicate to the said deities the properties mentioned in the schedule and make them debutter, and rights thereto vest in the deities from this day and from this day I become completely divested of rights to the said properties."

Held, that the deed amounted to a valid dedication. (*Khundkar, J.*) *BHABATARINI DEBI v. ASHMANTARA DEBI.* A. I. R. 1938 Cal. 490.

HINDU LAW—Religious Endowment.

the worship of ARINI DEBI v. 1938 Cal. 490
of office—of trustee—No creditable trustee.

Where a testator by his will founded a religious trust

Held, that in appointing one of the sons to the office of trustee, though no provision was made for the succession after that son's death, the testator must be held to have prescribed a line of succession in that son and his heirs. The appointment amounted to a grant of a heritable trusteeship. (*Madhavan Nair and Stedart, J.J.*) *RAMACHAR v. VENKATA RAO*

47 L. W. 764—1938 M. W. N. 175—

1—(1938) 2 M. L. J. 623.

—Direction to accumulate

not illegal if it does not benefit the settlor or members of his family at the expense of the idol or if its object is not so unreasonable as to be opposed to public policy. Even if the direction for accumulation is hit by S. 17, T. P. Act that in itself would not render the dedication invalid (*Khundkar, J.*) *BHABATARINI DEBI v. ASHMANTARA DEBI.*

A. I. R. 1938 Cal. 490.

—Religious endowment—Mahant alienation by—Validity—Possession of Alienee—When adverse. See RELIGIOUS ENDOWMENT—ALIENATION BY MAHANT

A. I. R. 1938 Pat. 143.

—Religious endowment—Mahant—Installation of

ath of a Mahant, the fully aware of the practice will be for successor usually nominated by seventeenth day after the death. When the Mahant resigns during his successor on the gaddi, it is obvious should be made aware of the proposed and should be given the opportunity to confirm the nominee. Intentions, this ill and the practice of al intimation meets confirmation by the in the nature of an it is important to

from generation to generation have to be taken into account. But even if the consensus of the whole family can convert an absolute debutter property into secular property, such consensus must be of all the members.

—Religious endowment—Mahant—Property acquired by—Nature of.

HINDU LAW—Religious Endowment.

The fact that properties have descended from guru (religious preceptor) to chela (religious disciple) does not necessarily lead to the conclusion that a property, when acquired by a mahant, loses its secular character and partakes of religious character. When a person enters the Udasi order, he becomes a member of his natural family and his natural relatives are not excluded from the property held by the other. There is however no reason for holding that an Udasi cannot acquire private property with his own money or by his own exertions. If he

HINDU LAW—Restitution of Conjugal Rights.

According to Hindu Law, When the worship of a *thakur* has been founded, the *shebaitship* is held to be vested in the heirs of the founder, in the absence of evidence that he has disposed of it. Otherwise, or there being some evidence of dealing, or some other mode of devolution, it makes a distinction between the male heir becomes a full owner of the property inherited by him and transmit it on death to his own heirs, while a female heir (barring certain exceptions in Bombay) only takes as a limited

1938 M W N 885—1938 A L J 799—
1938 O A 711—19 Pat L T 712—175 I C 459—
1938 A W R, (P. C.) 145—A I R 1938 P C 195—
(1938) 2 M L J. 228 (P. C.)

—Religious endowment—Trust—Endowment for religious charities—Essentials of validity—Arrange-

Religious endowment—Math—Succession**Mahant and ownership of property—How regulated.**

Succession to the office of Mahant, and the ownership of the Math property limited by the period of tenure of the Mahant.

in accordance with such custom (Lor)
SATNAM SINGH v. BHAGWAN SINGH

48 L W. 70—1938 M W N 748—1938 O A. 554—
1938 O W N 655—1938 Q L R. 330—
11 R P C 47—68 O L J 44—4 B R. 789—
40 Bom L R 812—1938 A L J 795—
1938 A L R. 659—175 I C 772—
1938 A W R (P. C.) 148—
A I R. 1938 P. C. 216—(1938) 2 M L J. 332 (P. C.)

—Religious endowment—Shebait—Nomination as shebait valid—Provisions about devolution after his death invalid—Founder's right to make fresh nomination

Where a person is nominated to the office of a shebait by a disposition which is perfectly valid so far as such an estate was concerned, there can be no question of reverter to the founder of the right of fresh nomination

—Religious endowment—Shebait—Right to relinquish office in favour of successor by nomination.

A shebait who has under the terms of the endowment a right to nominate his successor, can validly relinquish the shebaitship in favour of his nominee during his lifetime. (S. K. Ghose and Patterson, JJ.) NIRMAL CHANDRA v. JYOTI PRASAD

11 R O 292—68 C L J 230—
42 M W N 1138—A I R. 1938 Cal 709

—Religious endowment—Shebaitship—Succession

—Rule as—Right of founder's heirs—Founder's daughter's son—Estate taken—If only a limited one or full ownership—Collaterals of founder—Claims against heirs of daughter's son—Sustainability.

religious or charitable endowment is the intention to endow and the creation of a fund in fulfilment of that intention. A trust can be validly constituted under the terms of a written deed and when moneys are set apart for that purpose, that is money (Leach, C. J.) NAGAPPA FIRM

1938 M W N. 1017—M L W. 577—
A I R 1938 Mad 999.

—Restitution of conjugal rights—Suit by wife—Defences open—Gross failure on part of wife to perform obligation imposed by sacrament of marriage—Effect of

A claim for restitution of conjugal rights is of the nature of an equitable right. Although, under Hindu Law, the husband may be bound to maintain his wife, it does not follow that she is entitled, as a matter of course, for an order from the Court for the restitution of conjugal rights. That depends upon the facts of each case. Even something less than what might be called a matrimonial offence for the purpose of a divorce or judicial separation may be sufficient to prevent a plaintiff from obtaining an order for restitution of conjugal rights. Where a Hindu wife is the plaintiff in such a suit, gross failure on her part to perform the obligation of the sacrament of marriage imposed on her for the benefit of the husband might, if properly proved, afford good

deserted her husband's house, rejected all attempts at reconciliation and had insulted and outraged his family house and that she has been moved to seek an order for restitution of conjugal rights, not because in truth she wants to live with her husband, but merely to restrain a second marriage which the husband is contemplating, there being desertion on the part of the wife and a gross failure to perform the duties imposed upon her as a Hindu wife, the Court is justified in refusing to pass an order for restitution of conjugal rights in her favour.

HINDU LAW—Reversioner.

The mere fact that she has borne her husband a child is not, in itself, sufficient to outweigh her failure in other duties. The Court is even justified in refusing to pass an order in such a case on account of the unwisely conduct of the wife extending for a long period, even though the application may be made in good faith. (*Davis, J. C. and Weston, J.*) **RUKIBAI v. PARTABRAI.**

A.I.R. 1938 Sind 233

—**Reversioner—Consent to alienation by widow—Heirs of reversioner, if bound.**

Where a reversioner consents to an alienation by a widow his heirs are bound by such alienation as binding on the one it is ex the other. (*Weston, J.C.S.*) **UMRAO NATH**

—**Reversioner—Estoppel—Alienation—Consent of immediate reversioner—Has son, if estopped.**

Actual reversioners are not estopped from suing to

alienated by the widow to their father 43 C.W.N. 1062, followed. (*Lort Williams, J.*) **MANMATHA NATH SETT v. GOBINDA LAL.** 68 O.L.J. 173.

—**Reversioners—Right of—Alienation by widow—Subsequent sale for arrears of revenue—Right of reversioners to set aside alienation and revenue sale.**

A widow sold property to B who was a bona fide purchaser on 15th January, 1927. Subsequently property was in arrears in the payment of revenue property was disposed of in revenue sale on 6th

held, that the sale was for or the year during. Consequently a

appeal.

Held, further,

JOTI LAL SAH v. MT. RAMESWARI KUER. 176 I.C. 129=4 B.R. 682=11 R.P. 51= A.I.R. 1938 Pat. 281.

—**Reversioners—Right of to challenge alienation by widow—Nature of—Cause of action—Omission of presumptive reversioners to sue within time limited—Effect on remote or after-born reversioners—Suit barred before 1929—Reversioners under Act II of 1929**

—**Suit by—Maintainability.**

There is only one cause of action for the whole body

born, are precluded from suing altogether, the remedy of the presumptive reversioner having become time barred. Where, therefore, the remedy of the then reversioners has already become barred by time, persons who become reversioners subsequently by reason of the Hindu Law of Inheritance (Amendment) Act of 1929,

HINDU LAW—Stridhan.

cannot maintain a suit to declare the alienation void or not binding (*Agarwala, J.*) **DEBAL MAHTON v. MOTI MAHTON.** 19 Pat.L.T. 145= A.I.R. 1938 Pat. 510

—**Reversioner—Right to sue—Right of remote reversioner.**

Where the nearest reversioners have precluded themselves in some way by their own act or conduct from challenging the alienation made by the widow, persons who are the next in the line of reversion after them can prosecute a declaratory suit. Of course, if the nearest

—**Reversioner—Suit by nearest reversioners—Act II of 1929—altering succession and making plaintiffs of amendment and PRACTICE—PLEAD 1937 M.W.N. 1176.**

—**Reversioner—Suit to set aside widow's alienation—Death of widow—Suit if can be continued, See SPECIFIC RELIEF ACT, S. 42, PROVISIO, 16 Mys L.J. 167=43 Mys.H.O.E. 181.**

—**Reversioner—Widow obtaining decree of her title to estate—Subsequent decree against widow in suit for**

of compromise with persons in possession of the property. The compromise and consent decree thereon were dec-

of the reversionary title and decree against her in her suit for possession did not affect the reversioner's right to possession. (*Lort Williams, J.*)

—**Stridhan—Succession—Property inherited from mother.**

Stridhan inherited by a daughter from her mother passes on the daughter's death to the next heir of the mother. (*Khundkar, J.*) **SISIR KUMAR SAHA v. JAGNESWAR SAHA.** 41 C.W.N. 359.

—**Succession**

Bandhu.

Co widows' survivorship.

Illegitimate son

Mitakshara law.

Obstructed heritage.

Step sister's son

—**Succession—Bandhu—Heritability—Test.**

A bandhu or a bhinna gotra sapinda in order to have heritable rights must not be beyond the fifth degree from the common ancestor. (*Bennet and Verma, J.J.*)

HINDU LAW—Succession.

of great grandfather of respondents.

Under Hindu Law a son's son's daughter's son of the

survivorship and equal beneficial enjoyment; and right of survivorship may be relinquished by agreement between the widows. (*M. C. Goss, J.*) UCHMATAN v. RAJENDRA NATH SANYAL. 67 O.L.J. 115=

—*Succession—Illegitimate son—Portion of—Right*

father's death he becomes a member of the coparcenary—a member with curtailed rights but nevertheless a

Ben
SAD

Precedence amongst—Test to be applied—Religious efficacy—When to be resorted to—Maternal uncle and father's sister's son—Preference

propositus and father's sister's son, the former is entitled to succeed. (*Sir George Lowndes*) **BALASUBRAMANYA**

* —Inclusion—Consanguine marriage—Alone issue—acquirer—If get an interest by birth.

- The male issue of the acquirer do not obtain interest by birth in property which has descended obstructed heritage. (*Vishan Bose, J*) OFFICE
RECEIVED, AMROATI P. SRIDHAR.

174 I C. 849 (2) = 10 R N. 423 =
A.I.R. 1938 Nag. 7.

—Succession—Step sister's son—Position of.

The position of a step sister's (that is, half sister's) son is the same as that of a sister's son in the line of heirs. When the half sister's son is regarded in the line of descent and not merely collaterally, there can be

HINDU LAW—Widow.

no doubt that he stands in exactly the same relationship
" grandfather as the full sister's son and that the
" " will inherit from the grandfather equally. The
" " son to the uncle has to be traced eventually
" the grandfather, that is, the father of the

proposals—and though the sons of a full sister may exclude those of a half sister as between themselves, there seems to be no reason in principle why such sons

DU LAW—ALIENATION

Cowidown

Debt

Maintenance : *See also* HINDU—LAW **MAIN-**
TENANCE.

Nature of estate.

Position and powers.

Powers

Property acquired on Partition.

Reversloners' right to sue.

Right of residence.

Suit on promiss against widow.

Surrender.

—Willow—Alienation by—If void—Suit by rever-
sioner to avoid—Liability of alienor for mesne profits.

An alienation made by a Hindu widow being merely voidable and not void, the alienee cannot be made a reversioner until the

(Pollack, L.) PARASHU

by—Alienee in possession—
Acquisitions by, out of income—If accretions to estate.

It is impossible to extend the doctrine of accretion to cases where a stranger claims title to a portion of a

—Widow—Alienation—Consent of presumptive reversioners—Actual reversioners, if bound.

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—Widow—Alienation—Consent of reversioner—
Proof

When a 'stringent equity' arising out of an alleged consent of reversioners is sought to be enforced against them, such consent must be established by positive evidence, and should not be inferred from ambiguous acts. (*Restant*) **UNRAO MAL. v. GOPI** ■

HINDU LAW—Widow.

—Widow—Alienation—Powers of—Portion of purchase money not applied for necessity—Conditional decree setting aside sale—Validity.

In case of transfer by a Hindu widow, the transferee gets the property at least for the lifetime of the widow, even if there is no legal necessity justifying the transfer. If after the widow's death, the reversioner wants to avoid a sale made by her and the purchaser succeeds in proving legal necessity or benefit to the estate, the transfer is completely protected. There cannot be a case, where there is legal necessity or benefit to the estate and at the same time the alienation is set aside. When a particular transaction is justified by legal necessity, the mere fact that a portion of the purchase money was not applied for purposes of legal necessity would not entitle the Court to pass a decree setting aside the sale on condition that the reversioner pays to the purchaser the portion of the purchase-money actually spent for legal necessity. (*Mukherjee, J.*) **MEGHMALA v. SITAL PROSAD.** 43 C.W.N. 48

—Widow—Alienation—Right of third persons to challenge.

In the case of a Hindu widow it is open to the reversioners to challenge the legality of an alienation made by her but this right is not one of which a third person can take advantage. *A* advanced a sum of money to three brothers forming a joint Hindu family and jointly owning two properties, the advance being secured by mortgage of one of the properties. One of the brothers subsequently died intestate and childless, leaving behind a widow. *A* instituted a suit on his mortgage. Before a preliminary decree was passed in the suit, the widow brought a suit for partition of the joint property and mortgaged her interest in the property, for the purpose of raising a loan, in favour of *B*. *A* obtained a final decree in his suit and purchased it to him in execution thereof. *A* passed in the suit for partition and was declared entitled to a third party. *B* then filed a suit on his mortgage and obtained a preliminary decree. Later on, *A* alleging that the

HINDU LAW—Widow.

Where an usufructuary mortgage forms part of the estate of a Hindu husband, his widow has no right to transfer such mortgagee rights, without legal necessity. (*Bennet, A.C.J., Collister and Mulla, J.J.*) **FATEH SINGH v. RAGHUBIR SAHAI**

L.R. 1938 All. 904 = 178 I.C. 12 =

1938 A.L.R. 830 = 1938 A.W.R. (H.C.) 579 =

1938 A.L.J. 881 = 1938 O.W.N. 985 =

A.I.R. 1938 A. 577 (F.B.).

—Widow—Alienation—Setting aside of—Alienation set aside for want of necessity—Refund of purchase-money—Purchaser's right to claim, on ground of benefit to estate.

Where a sale made by a Hindu widow to liquidate her husband's debt is set aside on the ground that legal necessity is not proved as the widow had sufficient money in her hands, the purchaser cannot demand a refund of any portion of the purchase-money as against the reversioner on the ground of benefit to the estate, although the money secured by the purchase was actually paid in liquidation of debts due by her husband. (*Mukherjee, J.*) **MEGHMALA v. SITAL PROSAD.** 48 C.W.N. 48.

—Widow—Alienation by—Sale by reversioner—Death of widow. If suit can be continued. See SPECIFIC RELIEF ACT, S. 42 PROVISOR.

16 Mys L.J. 167 = 43 Mys. H.C.R. 181.

—Widow—Compromise by—Reversioners, if bound. Compromises in the nature of family arrangements which amount to bona fide settlements of disputes in respect of the estate, or compromises entered into by the widow bona fide for the benefit of the estate, may bind the reversioners even though they were not parties thereto. They are deemed to be alienations induced by necessity or as being in a parallel position thereto. Similarly a compromise of a claim made by the next reversioner in

—Widow—Co-widows—Nature of estate held by—Powers of—Relinquishment by one of right of survivorship—Prohibited—T. P. Regulation, S. 6

—Compromise in the estate of

them may relinquish her right of survivorship in that portion of the estate which is held by the other or others. (*Abdul Ghani and Singaravelu Mudaliar, J.J.*) **KITTAMMA v. SESHAMMA.** 16 Mys L.J. 232 = 43 Mys H.C.R. 43.

—Widow—Debts—Legal necessity—Decree—Ext-

contracted a simple loan. The decree in such a case

—Widow—Alienation—Right to set aside—Reversioner party to and taking benefit under transaction—Right to repudiate

Where a Hindu widow or other limited heir enters into a family agreement or compromise involving an alienation of the estate, the reversioner who has been a party to and has benefited by the transaction is excluded from questioning the alienation and repudiating it. A party to the alienation is bound by his or her own agreement. (*Abdul Ghani and Singaravelu Mudaliar, J.J.*) **MEGHMALA v. SITAL PROSAD.** 43 C.W.N. 48

—Widow—Alienation of usufruct—Belonging to the husband's estate—Validity.

HINDU LAW—Widow

should be deemed to have been passed against her, not in her individual capacity but as representing the estate of her husband. The test to see whether a simple money decree obtained against a widow is virtually a decree against the estate and is binding not only on the widow but on the reversioners, also is whether the widow was sued as a representative of the estate or in her personal capacity. A widow acting as representative of the estate in a mortgage deed (which is a simple money decree is passed against the widow in the same capacity, the decree can be executed by attachment and sale of the last male owner's property to the extent of such amount as had been borrowed for legal necessity. (*Niamatullah and Kachkol Singh, JJ*) PARATH NATH R RAMESHWAR PRATAP SAHNI

177 I.C. 373 = 1938 A.L.J. 834 =

1938 A.W.R. (H.C.) 610 =

1938 A.L.R. 739 = A.I.R. 1

Widow—Debts—Money borrowed**Note—Sued after widow's death against****Liability of reversioners**

In a suit based on a hand note, the persons liable on the hand note are only the parties in the note and the heirs of those parties. The last male owner cannot be executed by the widow of the persons who have signed the hand note as maker of the hand note altogether. (*Courtesy—T. RAMESHWAR MISRA P. J.*)

172 I.C. 24 = 1937 P.W.N. 835 = 10 B.P. 329 =

18 Pat. L.T. 810 = A.I.R. 1937 Pat. 667

Widow—Maintenance—Right—Ways of satisfying—Remedy of widow

property and no right in the Hindu widow by virtue of the Act. A portion of the property might be assigned to her in lieu of maintenance, in which she can only look to the profits and not to the property. But she can alienate it for her life time, but cannot thereafter claim to be maintained out of the property. Where a decree creates a charge in her favour, she can get a receiver appointed in execution though there is no provision in the decree itself. If she brings the property to sale in execution of her decree for maintenance, the charge on the property disappears after the sale and hence the purchaser cannot be made to pay her the date of decree for which execution. (*Base, J.*) TRIVENTI BAI v. DEAS

Widow—Nature of estate

A Hindu widow is not a tenant of the property inherited by her, restrictions on alienation, and to devolution of the estate at her death upon the next heir of the last full owner. She has absolute power of disposal over the property of an actual reversioner, can be made to be shown that (a) there was legal alienation after enquiry honestly believed necessary, or (c) there was such co-reversioners as would raise a presumption was a proper one. Such such reversioners as may fairly be

HINDU LAW—Widow.

ested to dispute the transaction, or (d) there was a surrender of her whole interest in the whole estate to his next reversioners, or a transfer of the whole estate to a stranger with the consent of the next reversioners. The reversioners' consent, however, loses its probative value, where the documents disclose that their object was to

Widow—Decree—Right to receive profits—Possession of alienation—When becomes wrongful.

A Hindu widow is not a tenant for life but is the owner of the property inherited by her from her husband subject to certain restrictions on alienation and subject to its devolving upon the next heir of her husband after her death. The widow cannot be made to be shown that (a) there was legal alienation after enquiry honestly believed necessary, or (c) there was such co-reversioners as would raise a presumption was a proper one. Such such reversioners as may fairly be

reversioner who brings a suit to set aside an alienation by the widow without legal necessity and succeeds in

Widow—Powers of alienation—Gifts in favour of dependent relation and for meritorious objects—Gift to widow of predeceased coparcener for her maintenance and her daughter's marriage expenses—Gift to Brah-

sense a trustee for the ultimate reversioner. She is the owner for the time being, fully capable of representing the estate so long as she acts *bona fide* and in the interests of that estate, but it is an ownership qualified by limitations which are of the very essence of the estate. For obligatory or necessary observances essential for the salvation of her husband's soul, she can go to the length of disposing of the entirety of the estate, where it is not considerable and where the requirements of the particular occasion demand it. For other but less peremptory purposes,

be allowed a reasonable latitude in the exercise of her powers provided she acts fairly and in a manner con-

HINDU LAW—Widow.

HINDU LAW—Widow.

the gifts were made publicly in the presence of several | against any property forming part of the assets of the
person's estate in his widow's hands. When
ly gets into the hand of the next legal re-
after the death of the widow, it still
be liable. (*Mulla, J.*) MST. CHAMPA

was reasonable in extent
and moral consideration
gift, valid and binding
in favour of the four
small pieces of land, were valid, being for good and
proper object
law, though
ceremony,
they were:

It is not necessary for a widow of a coparcener to
in the house, to
ice. Where the
after the other
to the family,

—Widow — Powers of — Compromise or family
settlement with reversioners—Validity and binding
character as against actual reversioners—Principles.

It is undoubted that it is competent to a Hindu female
holding a limited interest in the estate she holds as the
heir of the last male owner to enter into a family arrange-
ment or settlement with the reversioners.
A widow or other limited owner is the owner of
estate for the time being and fully represent
in litigation or otherwise. So long as the
entered into by the widow with the reversioner
device to divide the estate between her and
sioners to defraud the actual reversioner
succession opens, a family settlement bona

acts of the widow. To incur a debt without legal neces-
sity for the same is an unauthorized act of the widow
and if a creditor sues for such a debt and obtains a
decree and attaches the property in the hands of the
widow, a cautious reversioner may sue for a declaration
that these acts do not bind the reversionary interest. A

stitution in a Hindu family, the Court can direct
the mother to vacate the family house if the cir-
cumstances demand it. She has a right to a suitable
and if one can be found among the family
it is going very far to say that the Court
cannot compel her to accept it when a fair partition
separate
Court

arrangement must be upheld. (*Chandrasekhar Rao, J.*)
Venkataramana Rao, J.J.)
v. SINNAPENNAMMAL

47 L.W. 28

—Widow—Property at,
tion among sons—Nature of.

The property which a widow acquires under
shara Law on a partition among sons cannot be
as property given to her in lieu of her maintenance
should be treated as
one inherited from the
J.) BHAGWANTRA
SHIV I.L.R.

—Widow—Repr-
costs against widow

—Widow—Sued against widow on promissory note
debt—Considerations—Nature of
before judgment—If affects legal

Hindu widow is sued on a promiss-

HINDU LAW—Widow.

must be personal and hence only the widow's interest can be proceeded against in execution. The mere

ILB 1938 Nag. 382—178 I C. 101—
AIR 1938 Nag 225

—Widow—Surrender—Essentials of validity—Omission to include small portion of property in surrender through mistake or omission—If invalidates surrender.

For a valid surrender by a Hindu widow (1) there must be a complete effacement of the surrendering widow with the intention of accelerating the succession of the next apparent heir, (2) the surrender must be *bona fide* and must not be a mere cloak, the real object

cannot affect the validity of the surrender, which apart from it, is a *bona fide* transaction (*Rangnagar, J*)
HARIBHAI v NARAYAN. ILB. (1938) Bom 723—
40 Bom LR 878—178 IC 481—
AIR 1938 Bom 438.

—Widow—Surrender—Validity—Conditions.

A surrender by a Hindu widow must be of her whole interest in the whole estate in favour of the next reversioner, if only one, or of all the next reversioners, if more than one, at the time of alienation. It must be a *bona fide* surrender and not a device to divide the estate with the reversioner or reversioners. A sale of the estate for consideration cannot be regarded as a surrender (*Lord Williams, J*) MANMATHA NATH v GOBINDA LAL. 68 CLJ 173.

—Widow—Surrender—What amounts to—Arrangement between widow and her mother-in-law in nature of *ishbaga*—Mother-in-law taking larger share—Widow reserving to herself interest in remainder in certain items and asserting claim to certain share—Nature of.

Where a arrangement fact that the taken arrangement and turn it into one in the nature of a surrender by the widow. Similarly if the widow reserves to herself an interest in remainder in certain items of her husband's property and also asserts her rights to certain shares as against the in lifetime the arrangement can surrender by the widow in favour (*Varadachariar and King, JJ*); MAYYA. 177 IC 225—

11 B.M. 276—A

II. LAW OF INHERITANCE (AM.) ACT (1929)

—Widow—Surrender—Surrender by daughter-in-law in favour of aged mother-in-law—Validity—

spirit of the Hindu Law, it is an elderly woman making a one lower down in the line of male reversioner. But, it is

1038 M W N. 1032—11 B M 276—
A Y 1029 N 4 100

be guided in determining the effect of a testamentary disposition; nor is there any difference between the one law and the other as to the materials from which the intention is to be collected. Primarily the words of the will are to be considered. They convey the expression of the testator's wishes, but the meaning to be

will provided that a widow in default of adoption by her under certain conditions was to enjoy the estate for a lifetime and manage it in consultation with a person A, then if the widow does not adopt accordingly, she is entitled to take possession of estate and enjoy its income and if that particular person A dies, she is not

11 EPO 50—1938 AWR (P) 182—

4 BR 792—1938 ALR 664—

AIR 1938 PC 228—(1938) 2 MLJ 562 (PC).

—Will—Validity of—Member of joint family sending notice of separation to the other co-partener—Will executed by the member on the next day—Death of the testator before delivery of the notice to the co-partener. See HINDU LAW—PARTITION.

(1938) 1 MLJ 45.

maternal only when the succession opens out, and so if that event occurs after the Act has come into force, the order given in the Act should apply. (*Stone, C. J. and*

H. LAW OF INHERITANCE (AM.) ACT (1929) S. 2.

It appears to be probable that the Hindu Law of Inheritance (Amendment) Act, 1929, should apply to Jains and that the term 'Hindu' should be interpreted as including Jains more particularly in S. 1 (2) of the Act.

SAN V. MST. JATNABAI 177 I.C.
1938 N.L.J. 188 =

—(Amendment) Act (II) =
ability—Hindu dying intestate
faking estate and dying after
Succession to estate—Law of
operation

Succession to the estate of a widow surviving him is governed by the state of things which exists, not at his death, but at the death of his widow. In other words, for the purposes of succession a Hindu is deemed to have died not on the date on which he actually died, but on the date of the death of his widow.

succession to that estate To apply the Act when the widow dies after the Act is to no sense to make the Act retrospective (*Broomfield and Norman, J.J.*) SHANKARAO v. SHANTIBAI. 40 Bom L.R. 1201.

—S 2—Sister—If includes half sister.

The word 'sister' in S. 2 of the Act includes half sister. Consequently the son of the half blood and the son of the full blood both fall within the class referred to as 'sister's son' in the Act. It does not, however, follow that in contest between the son of a sister of the full blood and the son of a sister of the half blood the two would be deemed equal (*Stone, C. J. and Bose, J.*) SHANKAR V. P. 170 T.F. 952 =

—S 2—
'Sister' in
ment Act de
Row and V.
MUTHIRIAN

—S 2—
The term
Inheritance
half sister
(*Stone, C.*)
THAGAN

HINDU
1866).

Widow's right to maintenance—Execution of promissory note by co-partners to her uncle as guardian—Ratification by widow—Suit on promissory note—Remarriage if provides a defence to the suit—Widow if necessary party to suit.

INCOME-TAX ACT (1922), S. 2.

Act, the widow having remarried forfeited her claim to maintenance and as such the balance due under the promissory note cannot be claimed.

Held, (1) that though the widow was a beneficiary

—Ss 3 and 7—Re-marriage of widow—Validity—Performance of ceremonies—If essential.

There can be no valid marriage in any form without a substantial performance of the requisite religious ceremonies. The performance therefore of the necessary rites is necessary for the completion of a marriage even in a *gandharv* form, of which re-marriage is an instance. So, neither the consent of a widow to re-marry herself under last paragraph of S. 7 nor mere talk by a person in the presence of visitors of his intention to take her as his wife is sufficient to constitute a valid marriage in the absence of the performance of some religious or secular rites. 12 Mad. 72; Rel. on. (*Baguley and Spargo, J.J.*) N. PADAYACHI v. A. AMMAL. 174 I.C. 342 = 10 E.R. 899 = A.I.R. 1938 Rang. 59.

HUSBAND AND WIFE.

See (1) DIVORCE.
(2) HINDU LAW—RESTITUTION OF CONJUGAL RIGHTS.
(3) MAHOMEDAN LAW.
TYAGADASS v. ANANTHAMMA dismissed on brother who is

sequence of a
brother who is
d in his place,
against his
SHAN V. NUR
17 L.L.T. 11.
(1) (Burma)—

of.
applying English
under the Burma Income-tax Act,
of the English Income-tax Act,
of the Burma Income-tax Act,
(*Robert, C. J., Mya Bu*)
COMMISSIONER OF INCOME-TAX,
CONCERN.

Rang L.R. 346 = 10 R.R. 480 =

175 I.C. 231 = A.I.R. 1938 Rang. 151 (S.B.).

—Ss. 2(1) and 4(3) (viii)—Agricultural income

—Income of dairy when amounts to.

Where cattle are wholly stall fed and not pastured

upon the land at all, doubtless, it is trade and no agricultural income.

Where cattle are being

stall fed

and milk is

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task

balance due under the promissory
of the suit, the widow remarried,
that by virtue of S. 2 of the Hindu Widows Remarriage

ground, and whether they did so or not is immaterial.

residuary legatees under the will of their grandfather to certain house properties in Bombay in the year 1929. They got possession of the properties and managed it as joint owners and derived profit therefrom.

Held, that as soon as they elected to retain the properties and manage them as a joint venture producing income, they became an association of individuals within the meaning of S. 3 of the Income-tax Act and they were properly liable to be assessed as the owners of the properties under S. 9 (*Braumont, C. J. and Blackwell, J.*) COMMISSIONER OF INCOME-TAX, BOMBAY v. DWARKANATH

177 LC 447-11 E B

—S. 4—Appropriation agreement with debtor—Income tax authorities—If can ignore. See CONTRACT ACT, S. 59 TO 61.

A.I.R. 1938 Cal. 20.

—S. 4—Assesse resident in British India carrying trade there and controlling transactions abroad—Profits not received or brought into British India—Assessability.

A person in British India carrying on business there and controlling transactions abroad in the course of such business is not by these mere facts liable to tax on the

auctioneer's commission—If exempt from tax.

The element of periodical receipt or regularity or expected regularity of money return is an essential ingredient of 'income' under the Income tax Act. Certain debenture holders of a company obtained a decree against the company in respect of arrears of interest on the debentures and in execution brought the property of

the amount due to the debenture-holders. The debenture holder who was appointed auctioneer moved the Court to be allowed to deposit poundage payable to Government at the rate of 1½ per cent. instead of 6½ per cent. treating the remaining 5 per cent as auctioneer's commission. The Income tax Officer assessed him in income-tax, in respect of the 5 per cent auctioneer's commission.

Held, that in the circumstances it would be unreasonable to regard this as 'income.' In any event even if the amount paid to the debenture holders be regarded as a arise out of any business or vocation or occupation or trading nature and hence exempt of the Act. (*Thom, C.J.*) A. V. JOHN v. COMMISSIONER OF INCOME-TAX, BOMBAY

tion as dividend—If to be deemed to be received in British India

Where the income derived by a company by way of interest on its investments abroad is again reinvested abroad and retained there without being remitted to British India, and the investments retain their character of interest received abroad, such interest cannot be said to have been received in British India within the meaning of S. 4 of the Income tax Act. The mere fact that the amount of that income has been brought into account in ascertaining the profits for the year and has been taken into account in determining the amount to be paid in dividend to the shareholders of the company is irrelevant, unless it be proved that this actual income

him liable to tax in respect of such sums and where the assessee had kept his accounts according to the mercantile system, and had in the prior years treated similar sums as profits of the firm it was held that the profits in question though they did not actually arise or accrue in British India and were not physically transferred to, or received in British India, such profits, however, must be deemed by reason of S. 13 of the Act to have arisen or accrued in British India. Further as the assessee had in past years treated such profits as having been received in British India and his accounts on that basis had always been accepted by the taxing authorities, by reason of S. 13 of the Act the assessee could not seek suddenly to change their method of acc

INCOME TAX ACT (1922), T. 4

(*Harniss and Mulla, J.J.*) KANWALNEN HAMIR SINGH v. COMMISSIONER OF INCOME-TAX.

1938 A.L.J. 1015 = 1938 A.W.R. (H.C.) 722.

S. 4 (2)—Construction—"Received or brought into British India"—Limited Company in Bombay having income in London—Investment of such income in purchase of stores and machinery in England—Such stores and machinery sent to India but not for sale—If taxable

Foreign income may be received under S. 4 (2) of the Income tax Act in specie or in any form known to the common law as the receipt of money from

India income, profits or gains. Whether the foreign income has in fact been capitalised or not must be a question of fact in each case. The assessee, a limited company in Bombay, had in the year of assessment certain income amounting to Rs. 18,000 and odd, which they received in London. They invested that income, or at any rate the bulk of it, in the purchase of stores and machinery in England, which they shipped to Bombay, but not for the purpose sold and the proceeds applied as income.

Held, that the income received in London was capitalised by the purchase of machinery and stores, and the assessee was not therefore liable under S. 4 (2) to pay income tax on the stores and machinery which represented the income received.

C. J. and Blackwell, J.
TAX BOMBAY = AH

India on that date

Where in discharge of certain debts due in respect of a foreign business, a British Indian decree is assigned in British India

Held, that the transaction amounts to remittance in British India of money or money's worth even though

foreign business—Profits earned in one and lost in another—If to be set off against each other.

In deciding whether sums which are brought in from a business abroad are income, profits, or gains, the

INCOME TAX ACT (1922), S. 4.

YANAN CHETTIAR, v. COMMISSIONER OF INCOME-TAX, MADRAS. 48 L.W. 899 (S.B.).

—Ss 4 (3) (vi) and 10—Banking concern—Profits from sale of securities—Assessability—1 est.

The question of the assessability to income-tax of profits realised by a banking concern from the sale of securities and shares must be determined on the facts of each case whether the banking concern had been dealing in securities and shares as part of its business. In this matter the finding of fact arrived at by the Income-tax authorities is conclusive unless it is found that they were not necessary for the carrying on of the business of the banking concern.

LTD., AMRITSAR v. THE COMMISSIONER OF INCOME TAX

I.L.J. 1938 Lah 526 =

A.I.R. 1938 Lah 852.

—S. 4 (3)—"General public utility"—Bleaching of.

An object of "general public utility" within the mea-

benefit works of public utility confined to a section of the public, i.e. those interested in commerce. (*Brahmam, C.J. and Kania, J.*) COMMISSIONER OF INCOME TAX, BOMBAY v. GRAIN MERCHANTS

40 Bom. L.B. 1227.

and 66 (5)—Profits from

nts—If taxable—Exemption

fixed capital or of stock in trade, and whether such profits were exempt from payment of income-tax under S. 4 (3) (vi) of the Act.

Held, that if an investment is made with the object of permanently excluding a certain sum from the floating capital of a concern, it might be held to be fixed

of the business
ock-in trade, the
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business of the
and it received
of the business,
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same business, and hence the receipts therefrom were to all intents and purposes receipts from business. Even if they were not, they would not be

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INCOME TAX ACT (1922), S. 7.

the test to be applied in deciding as to whether it is capital assets or gain is to see whether there was a gain made in an operation of business in carrying out a scheme for making profits. (*Roberts, C. J., Mya Bu and Sharpe, J.J.*) COMMISSIONER OF INCOME-TAX, BURNA v. B. R. JUBE.

11 E.R. 156—A.I.R. 1938 Rang. 315 (S.B.)

177 I.C. 630

—S. 7 to 12—Taxable income—Executors spending amounts out of income—Exemption.

Where the executors made payments for the *shradh* expenses and for the costs of probate, out of the income of the estate coming into their hands as executors and in pursuance of obligations imposed on them by the testator, it is simply a case in which the executors having received the whole of the income of the estate apply a portion in a particular way pursuant to the direction of the testator and as such no allowance could be made in respect thereof in computing the taxable income. (*Lert Russell of Killisen*)

COMMISSIONER OF INCOME TAX, B.

65 I.A. 150—I.L.R. 193

32 S.L.R. 463—40 B.

1938 A.W.R. (P.C.) 87—42 M.W.N. 537—

173 I.C. 763—1938 F.W.N. 202—1938 M.W.N. 385—

19 Pat L.T. 290—(1938) M.W.N. 401—

1938 O.L.B. 175—1938 A.L.R. 247—

47 L.W. 614—1938 O.A. 389—10 E.P.C. 247—

4 B.R. 472—67 C.L.J. 101—1938 A.L.J. 261—

A.I.R. 1938 Pat 577

from
separate
income

A and *B* who carried on a joint business separated and divided between themselves the assets and liabilities of the joint business. Thereafter each carried on his separate business which had nothing to do with the former joint business. *B* during a year of assessment claimed that an outstanding debt assigned to him in partition with *A* was irrecoverable and hence should be exempted.

Held, that the loss claimed was capital loss and hence could not be deducted. (*Lert Williams, J.J.*) BISSE

In re.

—B. 10 (2)—Bad debt—Debt—When becomes bad debt.

In 1930, the assessee with a number of other co-creditors seized the property of the debtor and paid themselves to the debtor in full in satisfaction of the transaction re.

The assessee

system in

to deduct Rs. 1,600 which remained unpaid, from the total assessable income as a bad debt. It was found however that subsequent to the year 1930, the assessee

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A.I.R. 1938 Pat 577

—S. 10 (2)—Loss by theft or embezzlement—Right to deduction

A loss whether by embezzlement or whether by theft is not one of the allowances which is allowable to the assessee under S. 10 (*Courtney-Terrill, C. J. and Agarwala, J.*) MULCHAND HIRALAL v. COMMISSIONER OF INCOME-TAX, B. & O.

INCOME TAX ACT (1922), S. 10.

17 Pat 102—174 I.C. 580—1938 P.W.N. 247—

4 B.R. 459—10 E.P. 527—19 Pat L.T. 176—

A.I.R. 1938 Pat 159.

—S. 10 (2) and (3) Expl—Mutual Benefit Society—Fund floated with capital subscribed by shares—Chief income derived from loans to share holders—Taxability.

A company was floated with members subscribing its capital by way of share. The main source of income was the interest on the loans advanced to the shareholder members. It also derived interest on its securities, etc. In giving the return, the fund did not show the interest derived from the loans to the share holders as its income. Question was if that income was assessable.

Held the fund though a registered company was in fact a Mutual Benefit Fund Society and that income was not assessable, in enacting the Explanation to S. 10 (2)

COME TAX, MADRAS v. TANJORE PERMANENT FUND LTD. 176 I.C. 574—11 E.M. 83—47 L.W. 28—

A.I.R. 1938 Mad 57 (F.B.).

—S. 10 (2)—Right to deductions—Burden of proof.

It is a well settled principle that if any deduction is claimed, it is for the assessee to prove that that deduc-

A.I.R. 1938 Lah 530

—S. 10 (2)—Scope—Assessee having two businesses—Deductible items in one mistakenly entered in other—Claim to exemption at next assessment—Sustainability—Remedy of assessee

An assessee carried on two businesses one of selling goods in his own shop and the other of selling goods on commission. In an accounting year while submitting a return, he entered some items in his return which were not his commission. He claimed that some items in his return were exempted from tax in the subsequent year he sought to deduct those items from his income.

Held, that the proper remedy for the assessee was to move the income tax authorities and to show to their satisfaction the mistake he had made and to claim a deduction in the subsequent year.

J. and Agar-

COMMISSIONER

17 Pat. 102—

174 I.C. 580—4 B.R. 459—10 E.P. 527—

1938 P.W.N. 247—19 Pat L.T. 176—

A.I.R. 1938 Pat 159

(Addition and Din Mahomed, J.J.) Gobi Nath Vir BHAN v. COMMISSIONER OF INCOME-TAX, PUNJAB.

I.L.R. (1938) Lah 426—40 P.L.R. 228—

A.I.R. 1938 Lah 530

—S. 10 (2) (iii) and Expl—“Mutual Benefit Society”—Fund granting loans to persons becoming nominal members on payment of rupee one for share—Such members entitled to withdraw share subscription

INCOME-TAX ACT (1922), S. 23.

sion or under the control of the person making the return. The legislature could not have intended to impose a penalty on a person for non-production of documents which he does not control.

Kania, J.—There is no justification in law to call upon one friend to produce the books of another under S. 22 (4) and then in default to make the party called upon liable under S. 23 (4). (*Beaumont, C. J. and Kania, J.*) COMMISSIONER OF INCOME TAX, BOMBAY v. BOMBAY TRUST CORPORATION.

40 Bom. L.R. 1222.

—S. 23—Scope of—Duty of income-tax officer under.

S. 23 of the Income-tax Act deals with matters of assessment and not with computation of the income, profits and gains for the purposes of Ss 10, 11 and 12. It deals with 'return' and not primarily with accounts. If the return is correct and complete then the income-

option to do anything else. (*Stone, C. J. and Bose, J.*) COMMISSIONER OF INCOME-TAX v. ACHHRULAL.

1938 N.L.J. 172 = A.I.R. 1938 Nag. 485

—S. 23 (1)—Assessment—Finality.

When once the Income tax Officer has made the assessment under S. 23 (1), that assessment is settled. On the general principles of law governing estoppels, neither the subject nor the Crown ought to be at liberty to go behind the amount of profits and gains when once determined by any competent authority. The once made according to the provisions of the tax Act can only be reopened in accordance with the provisions of the Act (*Derbyshire, C. J. and Mukherjee, J.J.*) MAHALIRAM RANJ. *the matter of.*

177 I.C. 255 = 11 R.O. 217 = A.I.R. 1938 Cal. 557 (S.B.).

—S. 23 (2) and (3)—'Evidence'—If confined to direct evidence—Omission of transactions from account books—Rejection of such books by Income-tax Officer—If justified.

The word 'evidence' as used in S. 23 (2) and (3) of the Income-tax Act, is not confined to

rough average of sale for the last 10 years. Though the sale for the accounting period was shown as considerably

INCOME-TAX ACT (1922), S. 23.

—S. 23 (4)—Assessment under—Income tax Officer calling upon assessee to produce all account books—Assessee withholding same.

What happens in a subsequent year cannot be taken to be a criterion for what should have happened in the previous year, and if an order made by the Income tax Officer is not open to objection on any legal ground, it cannot be set aside merely on the ground that in any subsequent year he himself, or his successor did what he refused to do previously. Where therefore an Income-tax Officer calls upon the assessee to produce all the account books but the assessee withholds some, the Income-tax Officer is entitled to make assessment under S. 23 (4) even if he bases the assessment of the next year on the same material in the account books produced by the assessee in the previous year. (*Addison and Din Mahomed, J.J.*) TULSIDAS NAGIN CHAND v. COM-

O.P.L.B. 321 = 1938 Lab. 551.

—S. 23 (4)—Assessment under—Interference—Inherent jurisdiction of High Court.

The jurisdiction exercised by the High Court under the Income tax Act is a special jurisdiction and is consequently circumscribed within the limits specified in the statute. The power of revising, reviewing or interfering in any other manner with an assessment made under S. 23 (4) being nowhere conferred upon the High Court expressly or impliedly by the Act, no such power can be exercised merely by virtue of the general inherent jurisdiction of the High Court. (*Addison and Din Mahomed, J.J.*)

IND V.

1938 Lab. 551.

—S. 23 (4)—Best judgment assessment—Duty of I. T. officer.

The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, or vindictively or capriciously because he

ee's circumstances, and returns by and assess- other matters which he at a fair and proper necessarily be guess- be honest goe-work ammad, J.) MUBARAK ME-TAX, LAHORE. A.I.R. 1938 Lab. 867.

—S. 23 (4)—Determination of tax—Power of

INCOME TAX ACT (1922), S. 23

—Ss. 23 (4), 33, 34 and 35—*Final assessment under S. 23 (4)—When can be reopened—Powers of Commissioner.*

It is true that the Act nowhere imposes any limit of time within which an assessment under the provisions of Ss. 23 and 35 is to be made, and that the service of the notice of demand can therefore be made at any time. But it is not true that after a final assessment under those sections has been made, the Income tax Officer can go on making fresh computations and issuing fresh notices of demand to the end of all time. When once a final assessment is arrived at, it cannot be reopened except in the circumstances detailed in S. 34 and S. 35 of the Act and within the time limited by those sections. It is quite impossible to suppose that the Income tax Officer may in every kind of circumstance and after any lapse of time make fresh assessment or issue fresh notices of demand, or that the Commissioner can direct him to do so. The Commissioner's powers under S. 33 can only be exercised subject to the provisions of the Act.

super tax more than one year after final assessment under S. 23 (4) is beyond the powers of Income tax Officer. (*Lord Roper*.) COMMISSIONER OF INCOME-TAX.

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A.I.R. 1938 P.O. 175—(1938) 2 M.L.J. 115 (P.G.)

—S. 25 A—*Applicability—Conditions.*

The language of the section makes it clear that an order declaring separation shall only be passed if (1) the members of the family—

enter into a partnership in respect of a portion of joint property which they retain while retaining the keeping the rest of the property. (*Bajpai, J.*) SUNDAR LAL SUNDAR LAL INCOME TAX

1938 A.I.R. 175—(1938) 2 M.L.J. 115 (P.G.)
177 I.C. 260—1938 A.L.R. 72

—Ss. 25 A, 26 (2) and 35—*Hindu undivided family assessed as one unit—Separation by partition—Separated members constituting themselves into firm—Application for registration and for assessment under S. 26 (2)—Competency—Proper procedure for assessment.*

The assessee who were a joint Hindu family consisting of a father and his seven sons who were hitherto assessed as an undivided family during the year of account, and short after the father and his seven sons formed a firm and applied to the Income tax Officer to register the firm under S. 26 A of the Income tax Act, and to make the assessment under S. 26 (2).

Held, (1) that there had been no succession within the meaning of S. 26 (2) of the Act, and the Income tax

INCOME-TAX ACT (1922), S. 26.

Officer was therefore not bound to register the firm under S. 26 A and to assess under S. 26 (2), (2) that the Income tax Officer was bound to make the assessment under S. 25 A (2) of the total income received by the joint family as such and to hold each member liable for his proportionate share of the tax so assessed. (*Braumont, C. J. and Blackwell, J.*) COMMISSIONER OF INCOME TAX, BOMBAY P. JESINGBHAI

176 I.C. 817—11 E.B. 52—40 Bom. L.R. 452—A.I.R. 1938 Bom. 350.

—S. 25 A—*Enquiry under—Discretion of Income-tax Officer—Reference to High Court.*

Under S. 25 A of the Income tax Act, the Income-tax Officer has a discretion to conduct an inquiry in such manner as may seem to him, in his judgment, to be best in the circumstances of the particular case and to hear such evidence, and such evidence only, as he may in his discretion consider it necessary to hear, to enable him to come to a decision on the question whether a separation of the members of the family has taken place or not.

Dentley, J.) BANSIDAR & SONS v. THE COMMISSIONER OF INCOME-TAX BURMA 177 I.C. 582—1938 Rang L.R. 130—11 E.B. 141—A.I.R. 1938 Rang. 154.

—S. 25 A—*Hindu undivided family—Claim to be assessed as members of contractual partnership—Proof required.*

Before persons who have been previously assessed as a Hindu undivided family can claim to be separately assessed as members of a contractual partnership, they must establish that the joint family has been dissolved. 57 Cal 1336 relied on. (*Roberts, C. J. and Dentley, J.*) BANSIDAR & SONS v. THE COMMISSIONER OF INCOME TAX, BURMA. 1938 Rang L.R. 130—177 I.C. 582—11 E.B. 141—A.I.R. 1938 Rang. 154.

—S. 26—*Reconstitution of firm—Evidence.*
It is not sufficient grounds for a person to reduce the incidence of his tax in any legitimate way, and the mere fact of reconstitution of the firm has reduced the incidence of the tax is by itself no evidence that the reconstitution of the firm was not introduced, or that the capital was not introduced, or that the assets of the firm reverted to its old condition.

re not sufficient grounds for

A.I.R. 1938 Lab. 194.

—S. 26 (1)—*"Change in constitution of firm"—Meaning of.*

The words "change in the constitution of a firm" mean a change in its partners or personnel but not a

Transfer of agency by one agent to another.
Firms A and B carried on business at different areas in their own names, part of their business being to represent solely in their respective areas, a company

INCOME TAX ACT (1922), S. 26.

facturing machines. *B* transferred the stock-in-trade relating to agency, hire purchase agreements about the

INCOME-TAX ACT (1922), S. 30.

OF INCOME-TAX, LAHORE. I.L.R. 1938 Lah. 113—
A.I.R. 1938 Lah. 105.

under S. 20 (cf. *Chandramurthy, Ag. J. C. and Mehta, A. J. C.*) **TOLARAM RANDAS v. COMMISSIONER OF INCOME TAX, BOMBAY AND ADEN.**

32 B.L.R. 203=173 L.C. 786 (2)=10 E.S. 227—
A.I.R. 1938 Sind 33.

—S. 26 A—Application under—Duty of Income-tax Officer—Decision as to separation.

It is open to the Income-tax Officer to suspend orders on an application already presented under S. 26 A by members of a Hindu family until the assessment proceedings are held. If at the time of making the a claim is made under S. 25 A it is the duty of the Income tax Officer to decide whether there is separation of members and a partition of the property within the meaning of sub-s. (1) of that section. It is found that there has been such separation and partition an order will be passed to that effect, and if it

ed by a deed of partnership which was not registered under the Registration Act but which purported to specify the individual shares of the partner.

Held that as the gifts were not made in accordance with the provisions of S. 123, T. F. Act, there were no valid gifts by assessee to his sons and employees and hence there were no contributions by them to the capital of the alleged partnership. Moreover, the capital of the business consisted mainly of immovable property and as it had not been registered under the Registration Act it was not a legal partnership.

A.I.R. 1938 Rang. 435.

—S. 28—Assessee claiming false deduction—Liability.

It has been used in the Income tax and it connotes the assessable accounting for all the legitimate deductions and consequently if any false particulars about any item are given for before the assessable figure is arrived at, the assessee is liable to be assessed himself within the clutches of the Income tax Officer who deliberately claims a deduction.

—Ss 26 A and 2 (14)—Registration of income-tax authorities to go into existence.

name | *Chandramurthy, Ag. J. C. and Mehta, A. J. C.*

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INCOME TAX ACT (1922), S. 31.

1929 Lab. 593: 10 L. 596 (F.B.), Appr. (*Lord Romer*).
COMMISSIONER OF INCOME-TAX, BOMBAY v. KHEM-
CHAND RAMDAS.

65 I.A. 236—J.L.R. 1933 Bom 487—
175 I.O. 1—42 C.W.N. 873—10 R.P.H. 303—
48 L.W. 47—1938 O.L.R. 291—67 O.L.J. 442—
4 B.E. 645—1938 A.L.R. 436—1938 C.W.N. 621—
1938 P.W.N. 568—1938 A.W.R. (P.C.) 163—
32 M.L.R. 519—1938 A.L.J. 754—
1938 M.W.N. 888—40 Bom L.R. 654—
A.I.R. 1938 P.C. 175—(1938) 2 M.L.J. 115 (P.C.)

—Ss 31 (3) (a) and (b) and 34—

assessment—Limitation.

No doubt S. 31 of the Income tax Act
Assistant Commissioner of Income tax
to enhance an assessment, but that power cannot be
exercised irrespective of the limitations imposed by S. 34.
The Assistant Commissioner is not, therefore, legally

INCOME-TAX ACT (1922), S. 43.

—Ss. 34 and 23 (4)—*Best judgment assessment*
—*It can be reopened.*

When once a final assessment is arrived at, it cannot
be reopened except in the circumstances detailed in S. 34
and S. 35 of the Act and within the time limited by
those Sections. This evidently implies that even the
"best judgment" assessment can be reopened under
S. 34. (*Addison, Ag. C.J. and Din Mohammad, J.*)
MUBARAK ALI v. COMMISSIONER INCOME-TAX
LAHORE. A.I.R. 1938 Lah 867.

35. A.I.R. 1938 P.C. 175.

—S. 34—*Action under—Duty of Income tax*
Officer—Assessee's right to be heard.

It is the Income tax Officer who is to decide whether
income chargeable to tax has escaped assessment, he is
the person charged with the duty of taking action under
S. 34 where such action ought to be taken. Apart from
the assessee no person other than the Income-tax Officer
can by reason of S. 34 of the Act have any knowledge of
the first assessment and upon what date it was based, and
none else is in a position to decide whether income has
escaped assessment or not. In deciding whether income
has escaped assessment the Income tax Officer must not
act on suspicion or conjecture; he must decide the ques-
tions upon a fair and reasonable consideration of such
information and materials as were available to him. He
need not hold a formal enquiry, but he should indicate
to the assessee the nature of the alleged escapement so as
to enable him to identify it and explain it if he can. In
other words he should give the assessee an opportunity
of being heard before he decides whether income has
escaped assessment. If the Income tax Officer is
satisfied with the assessee's explanation of the matter.
On the other hand, if he is not satisfied with the explana-
tion of all the information furnished by the assessee,
including the explanation of the failure of assessee to give
a full and correct statement of his income.

does not militate against the above view, but it only
contemplates the possibility of the assessee, (or) the
agent not being able to pay the tax and provides the
necessary method of recovery. The word 'agent' for the
purposes of S. 42 has a wider scope than it has in ordi-
nary use (*Collister and Harpal, J.J.*) MAHARAJAH OF
BENARES v. COMMISSIONER OF INCOME-TAX

I.L.R. 1938 All 432—175 I.C. 167—
1938 A.L.R. 575—11 E.A. 76—
1938 A.W.R. (H.C.) 247—1938 A.L.J. 341—
A.I.R. 1938 All 310.

—Ss. 43 and 22—*Notice served on assessee as agent*
of non resident—Question of agency—When must be
determined

It is open to the Income-tax Officer under the
Income-tax Act to postpone any final determination of
the question of agency until the time comes to make an
assessment under S. 23, as the Act imposes no technical
requirement in this connexion. It may be reasonable

Shree, C. J., Khundhar and Mukherjee, J.J.
LIRAM RAMJEDAS, In the matter of

177 I.O. 255—11 E.
A.I.R. 1938 Cal 56

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INCOME-TAX ACT (1922), S. 43.

47 L.W. 16=1938 A.L.J. 41=1938 A.L.B. 1=1938 O.L.B. 1=1938 M.W.N. 41= A.L.B. 1938 P.C. 8=(1938) 1 M.L.J. 123 (P.C.)

—S. 43—Notice under, not mentioning year for which assessee was to be treated as agent—Notice under S. 22 (2) specifying year—Assessment, if illegal.

The notice is by S. 43 made part of the series of facts which results in the resident being deemed agent by force of the section. The extent of his responsibility if he is deemed agent is not affected by the notice.

Income-tax Officer proposed to treat assessee as an agent. (Sir George Rankin) COMMISSIONER OF INCOME-TAX, PUNJAB v. NAWAL KISHORE KHARAITI LAL. 65 I.A. 12=I.L.B. 1938 Lah 129=1938 A.W.R. (P.C.) 10=

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sale.

Crown for payment out towards income-tax due by assessee—Competency—Power of Court to order payment. See C. P. CODE, S. 151.

(1938) 1 M.L.J. 351 (F.B.).

—S. 48 A—Applicability.

S. 48-A of the Income-tax Act comes into play only when the income-tax has been actually paid in excess and not earlier. (Addison and Din Mohammad, J.J.)

party to produce.

The object of S. 54 of the Income tax Act clearly is to make the income-tax returns and statements confidential as between the assessee and the income tax department, and against the whole world, except for

ing deficiency—Power of department to go behind balance sheet

Where in the case of an assessee who is a Life Insurance Company, the actuarial valuation balance sheet on the last date of the last preceding valuation shows a deficiency. R. 25 of the Income tax Act does not go behind the said valuation to ascertain whether there were any profits in the preceding valuation.

INCOME-TAX ACT (1922), S. 59.

Mukherjee, J.J.) HIMALAYA ASSURANCE CO., In the matter of. 42 C.W.N. 440.

—S. 59—Rules framed under R. 25—'Last preceding valuation'—Meaning of—Insurance Company—Actuarial reports in 1930 and 1934, December—Return of income for 1933—Basis of assessment, the 1930 or 1934 report.

The expression 'last preceding valuation' in R. 25 framed under S. 59 of the Income-tax Act, does not mean the valuation made in the last valuation period.

a return of income based on the actuarial valuation made in December 1930, but the Income-tax Commissioner claimed that the return of income ought to be on foot of the actuarial valuation made in December 1934.

Held, that the return as made by the company was last preceding valuation was only made in December 1930, but the Income-tax Commissioner claimed that the return of income ought to be on foot of the actuarial valuation made in December 1934. Held, that the return as made by the company was last preceding valuation was only made in December 1930, but the Income-tax Commissioner claimed that the return of income ought to be on foot of the actuarial valuation made in December 1934.

(1938) 1 M.L.J. 11 (F.B.).

—S. 59(2) (a) (ii)—Rules under R. 30—Construction—'May be treated as expenditure'—Meaning of—If confers option on Income tax Officer—Rights of assessee—Sums set aside towards depreciation—If to be brought back in time of appreciation of securities.

The words "may be treated as expenditure" in R. 30 of the rules framed under S. 59(a) (ii) of the Income tax Act confer upon the Income tax Officer the option to treat the sums as expenditure or as depreciation of, or loss on, property carried to a reserve fund, and not used for any

other purpose, as expenditure incurred solely for the purpose of earning the profits of the business. Such a construction would do violence to the plain words of the rule. The rule really confers an option on the assessee to write off in his accounts to meet depreciation or to carry

or the sums set aside towards the reserve fund as an item of expenditure.

Held, that the sums having been properly placed to the special reserve in the first two years of the triennial period, there was nothing in the rules which required

INCOME-TAX ACT (1922), S. 63.

of earning the profits of the business, and there was nothing in the rule to compel the assessee who has exercised his option to bring back the sums properly set aside under the rule. The mere fact that there was any appreciation in the securities in the third year was entirely irrelevant. (*Beaumont, C. J. and Blackwell, J.*) *Ct. WESTE*

S. 63—Notice to trading name—Sufficient

A notice addressed in its trading name is requirements of S. 63. (*Agarwala, J.*) *SOMU*

INCOME-TAX, BIHAR AND

17 Pat. 187=174 I.C. 267=4 B.R. 423=10 R.P. 487 (2)=A.I.R. 1938 Pat. 91.

S. 60—Question of fact—Advance made by partner—If loan or increase in capital.

The question whether an advance made by a partner is a loan to the partnership or an increase in the capital of the firm is a question of fact, and when once the Income-tax authorities have held that it was by way of

S. 68—Referring several questions to arbitration—Propriety

When questions of Income tax for the question should be should not be made to consist two or more questions in the form of one question. The questions should not

Ss 66 (2) and (3)—Application by assessee to High Court—When competent.

Before an assessee can put in an application to the

INCOME-TAX ACT (1922), S. 66.

principle to the question of fact to be decided would have arrived at the same conclusion (*Roberts, C.J., Mga Bu and Sharpe, J.J.*) *COMMISSIONER OF INCOME TAX, BURMA v. H. B. JUBB.* 177 I.C. 630=11 B.R. 156=A.I.R. 1938 Rang. 315 (S.B.)

S. 66 (2)—Reference—Scope of investigation.

The High Court is not competent to investigate matters of fact in a reference under S. 66 (2). Whether or no in any particular case there is any evidence to support the finding of fact arrived at below is, of course,

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A.I.R. 1938 Rang 315 (S.B.).

S. 66 (2) and (3)—Competency of appeal to Assistant Commissioner in question—Decision of Commissioner adverse to assessee—Assessee's right to get question decided by Court.

Where one of the questions of law arising out of the order of the Assistant Commissioner was whether the appeal to him was competent in view of the proviso

(as amended in 1933), S. 66 (2) and (3)—

is prejudicial to the assessee (*Phurank, J.*) *TRIMBAK v. COMMISSIONER OF INCOME-TAX* 172 I.C. 511=10 R.N. 213=A.I.R. 1938 Nag 18.

Dunkley
ME-TAX.R. 56=
(F.B.).

INCOME-TAX ACT (1922), S. 66.

—S. 66 (3)—Decision of

and to refer a question of law to the High Court which the assessee has not duly required the Commissioner to refer under S. 66 (2). (*Roberts, C. J. and Dunkley, J.*) ABBA DADA & Co. v. COMMISSIONER OF INCOME TAX, BURMA. A.I.R. 1938 Rang. 435.

—S. III (3)—Question of law—Computation of profits at a high rate.—If a ground to direct Commissioner to state a case. See INCOME-TAX ACT, SS. 13 AND 66 (3). 1938 A.W.R. (H.O.) 332 = A.I.R. 1938 All 367.

—S. 66 (3)—Question of law not raised in application under S. 66 (2)—Right to demand reference in respect of.

Where an applicant has failed to raise a particular question of law in his application under S. 66 (2), he is not entitled to require the Commissioner under S. 66 (3) to refer to the High Court that particular question of law. (*Derbyshire, C. J. and Costello, J.*) BABULAL RAJGARHIA, In the matter of. 177 I.C. 300 = 11 R.O. 221 = A.I.R. 1938 Cal 168.

—S. 66 (3)—Question not raised before Commissioner—Jurisdiction of High Court to entertain.

Under S. 66 (3) of the Income-tax Act, the jurisdiction of the High Court is confined only to those matters which are contained in the application made to the Commissioner under S. 66 (2) and it is only in relation to such matters that the refusal of the Commissioner to state the case can be investigated by the High Court. Consequently if a point is not raised before the Commissioner, it cannot be raised for the first time before the High Court under S. 66 (3). (*Addison and Din Mohammad, J.*) SOM CHAND-MALIK CHAND v. COMMISSIONER OF INCOME-TAX. 1 I.L.R. 1938 Lah 477 = 177 I.C. 222 = 11 R.L. 283 = 40 F.L.R. 308 = A.I.R. 1938 Lah. 545

—S. 66 (5)—Finding of fact—High Court, if can

interfer
AND

IND. & COL. DIVORCE JUR. ACT (1926), S. 1.

powers. (*Leach, C. J. Varadachariar*) COMMISSIONER OF INCOME-TAX. 174 I.C. 491 = M.W.N. 465 = 47 L.W. 350 = A.I.R. 1938 Mad. 352 (F.B.).

—S. 66 A (2)—Leave to appeal to Privy Council—Fit case—Substantial question of law—Question as to effect of S. 4 (2), proviso 2.

The question as to the effect of the second proviso to S. 4 (1) of the Income tax Act is a substantive question of law, and is a fit one for appeal to His Majesty in Council. COMMISSI MATHIAS

—S. 66-A (2) and (3)—Valuation—Annual assessment of income-tax less than Rs. 10,000—Leave to appeal—If to be granted.

In an application for leave to appeal to His Majesty in Council in respect of an assessment to income-tax involving only Rs. 3,500, leave ought not to be refused merely because the assessment in question is less than the required amount of Rs. 10,000. Where the assessee carries on a large business and the question is likely to arise every year while he remains in the business, the amount in the end would be very considerable; a certificate of leave to appeal should therefore be granted in such a case. (*Leach, C. J., Varadachariar and King, J.*) COMMISSIONER OF INCOME-TAX, MADRAS v. S. L. MATHIAS. 174 I.C. 491 = 10 R.M. 718 = 1938 M.W.N. 465 = 47 L.W. 350 = A.I.R. 1938 Mad. 352 (F.B.).

INDEMNITY. See also CONTRACT ACT, SS. 124-133.

—Contract of—Vendee undertaking to pay off mortgage debt of vendor—If amounts to—If should be express or can be implied. See LIMITATION ACT, ARTS. 83 AND 110—APPLICABILITY.

1938 A.L.J. 455 (F.B.). —Principle underlying—Nature and extent of protection.

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TARY OF DISTRICT JUDGE, AND
of leave to Income tax Commissioner—Power to impose conditions.
In granting leave to appeal to His Majesty in Council on the application of the Income tax Commissioner the High Court has no power to impose a condition that the Income tax Authorities shall pay the costs of the assessee respondent. The High Court are confined in this respect to the provisions of S. 66-A of the Income tax Act. The provisions of the Civil Procedure Code are not applicable to such appeals. The High Court have, on occasions, granted special leave that the appellant shall

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INLAND STEAM VESSELS ACT (1917), S. 58.

1937.—If available in suit after 1937—Description by husband—Right to divorce.

The words "law for the time being in force in England" in proviso (a) to S. 1(1) of the Indian and Colonial Divorce Jurisdiction Act, in their natural adaptation mean the law in force at the time when grounds of divorce fall to be considered in the suit, and not the law in force at the time of the passing of the Act of 1926. The reference to a "Court in India having such jurisdiction" in S. 1(1) only limits the class of persons to whom a decree of dissolution can be granted, but does not affect the grounds upon which such a decree

INSOLVENCY.

blish the element of *mens rea* as pre-requisite of conviction. The section as worded, gives no option to the Magistrate but to hold the owner and master liable, if the section is contravened. It is not at all unjust to hold the owner liable since it may be presumed that the owner has profited by reason of the passengers carried in excess. (*Aladan, J.*) RIVER STEAM NAVIGATION CO., LTD. v. EMPEROR. 16 Pat. 668=

1937 P.W.N. 813=18 Pat.L.T. 941=

4 B.R. 232=173 I.C. 249=39 M.L.J. 276=

10 R.P. 395=A.I.R. 1938 Pat. 66.

INSOLVENCY See also PRESIDENCY TOWNS

A.I.R. 1938 Bom. 425.

INLAND STEAM

S. 58—Applicability—
of number entered in
Certificate not in force
If bar to conviction.

The fact that the certificate is under renewal at the time of the offence does not render S. 58 of the Inland Steam Vessels Act inapplicable. For the purposes of S. 58, the certificate intended is the certificate last issued for the steamer and it is immaterial that that certificate was under renewal at the time. If passengers are carried in excess of the certified number, i.e., of the number entered in the certificate as being in the vessel, the surveyor the number which there is a contravention of the and master of the vessel as liable does not require that the certificate requires that the steamer number of passengers which of the surveyor, as entered in of survey, it is fit to carry is under renewal and not in to conviction. (*Aladan, J.*) RIVER STEAM NAVIGATION CO., LTD. v. EMPEROR. 16 Pat. 668=

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4 B.R. 232=173 I.C. 249=39 M.L.J. 276=

10 R.P. 395=A.I.R. 1938 Pat. 66

voyage of the passengers.

liability of owner—Proof of loading—If required.

In a prosecution of the S. 58 of the Inland Steam Vessels Act for carrying passengers in excess of the certificated number, the

meant by this that the primary burden can be abrogated.

enolment must produce hope to succeed, but he other side of the truth of his story and SANGAPAL v. UNRAO 430=10 B.N. 456= A.I.R. 1938 Nag. 216.

—Amendment of insolvency petition—Powers of Court—Amendment to cure defect without introducing new debt or new creditor—Permissibility See PROVINCIAL INSOLVENCY ACT, S. 5

48 L.W. 263=(1938) 2 M.L.J. 390.

—Double adjudication—If allowed—Procedure.

make up its mind the particular proceedings shall proceed and the be realized. (*Alia Bu.*) CHUAN SENG & CO v. A.I.R. 1938 Rang 475.

—Insolvency Court—Proof of debt—Judgment debt against insolvent—Jurisdiction of Insolvency Court to refuse to admit—Power to go behind decree against insolvent—Principles—Official Assignee not choosing to

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—Jurisdiction—Inclusion of doubtful debt—If affects jurisdiction.

INSOLVENCY

debt is one of the debts which would nevertheless have to be taken into consideration in administering the insolvency. (*Wort, Ag. C. J. and Manohar Lal, J.*)
RUP

—If individually become insolvents.

If A, B and C are adjudicated insolvents under a firm name, then A, B and C individually become insolvents. If A and B are carrying on business elsewhere under another firm name, they and the firm are automatically involved in insolvency by their previous adjudication.
PREMS

tion by Official Assignee—Bona fide transactions with such property—Validity.

When the Official Assignee does not intervene, all transactions in respect of property acquired after the insolvency with any person dealing with the insolvent bona fide and for value are valid against the Official Assignee. (*Shaw, J.*) SOLOMON DAVID v. THE KING, 176 I O 460=11 R.R. 65=39 Cr.L.J. 754=A.I.R. 1938 Rang. 245.

—Question of title—Duty of Courts—Reference of dispute to Civil Courts.

Courts should be a little careful in disposing of all matters in insolvency which have the effect of deciding

INSURANCE.

GAR v. OFFICIAL RECEIVER OF TRICHINOPOLY.
1938 M.W.N. 1160=A.I.R. 1938 Mad 591=
(1938) 1 M.L.J. 543.

shall be paid by yearly instalments and in case of three successive defaults the whole amount shall become payable, the default clause does not take away the right of the creditor to bring suits for instalments as they fall due. If the creditor chooses to get his instalment every year by means of a suit and thus makes it impossible to end of three years, he there is nothing in law
r Ahmad, J.) LAKHMI
=10 R. Pesh. 7 (1)=
A.I.R. 1938 Pesh. 31.

INSURANCE—Fire insurance—Policy—Construction—'Opening' in godown—Meaning of—Breach of warranty—Waiver.

A policy of fire insurance in respect of premises and stock contained in a jute godown was issued subject to certain warranties. One of the clauses of the warranties defined a "Godown" as (1) any separate self-contained building situated at a distance of 14 feet or more from any other building, or any separate self-contained building situated less than 14 feet from another building provided that every wall thereof facing any such other building was built without openings of any kind or if

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warranty, as such terms were meant to refer only to "openings" permanent in character and of substantial size.

Held, further, that even if there was breach of term

—Fire—Policy, if constitutes entire contract.

The contract between the insured and the company is the policy. The policy is a document complete in itself. Where therefore in a fire insurance policy there is a warranty by the assured that no hazardous goods will be stored, he cannot plead that he can store one per

into Court.

Held, that the application was perfectly competent, and there was no warrant for holding that the receiver in insolvency was not subject to the orders of the Civil Court. It made no difference that whom the order was to be made
Official Receiver, he was a party bound by the order of appointment in his presence. The Official Receiver as party to the suit, was bound by the orders of the Court. The question of ownership of the amounts collected by the Official Receiver subsequent to the order of appointment of receiver but accrued due before that order should, however, be properly reserved. (*Venkatarama Rao and Abdur Rahman, J.J.*) SUNDARAM AIYAN-

INSURANCE.

cent. of hazardous goods because under the terms on which the insurance company generally does business or according to warranties in force at other times or allowed by other companies one per cent. might have been allowed. (*Dalip Singh and Skemp, Jf.*) ABDUL MAJID v. MOTOR UNION INSURANCE CO.

178 I.C. 35=40 P.L.R. 549=A.I.R. 1938 Lah. 168

—Fire insurance—Company taking possession of salvage and keeping it for month—If estopped from contesting claim of insured.

When in a fire insurance policy there is no clause relating to salvage, the mere fact that the insurance company takes the salvage and keeps it for about a month does not operate as an estoppel against its pleading that the insured cannot make a claim under the policy. (*Dalip Singh and Skemp, Jf.*) ABDUL MAJID v. MOTOR UNION INSURANCE CO.

178 I.C. 35=40 P.L.R. 549=A.I.R. 1938 Lah. 168

—Fire insurance—If warranty by assured not to store any hazardous goods—Breach—Building destroyed by fire.

by fire, will not be entitled to any claim against the company. (*Dalip Singh and Skemp, Jf.*) ABDUL MAJID v. MOTOR UNION INSURANCE CO.

178 I.C. 35=40 P.L.R. 549=A.I.R. 1938 Lah. 168

—Life insurance—Mis-statements—False answers by assured to questions by company—Liability of company.

treated by a medical man for tuberculosis to the knowledge of the assured within a year from the date when the answers were given, and that the assured had consulted medical practitioners for samting fits and other ailments during the last five years. The Chief Medical Officer of the Insurance Company gave evidence that if he had known the facts about the aunt of the assured, he would have made a further investigation and also referred the matter to headquarters before issuing a policy. He said also that if he had known about the fainting

INSURANCE.

fits and upon further investigation had found that these came on suddenly, he would have rejected the proposal.

Held, that the answers given by the company were untrue and fraudulent, in the sense that they were made with knowledge of their falsity, and were designed to induce the company to accept the life of the assured on terms which they would have declined, had they known the truth, and that, therefore, the company was entitled to repudiate their liability under the policy. (*Costello and Panckridge, Jf.*) MANUFACTURERS LIFE INSURANCE CO., LTD v. SM. HAKIDASI DEBI.

42 W.N. 823

—Life insurance policy—Days of grace for payment of premium—Computation of—Due date—If to be excluded.

Where a policy of life assurance gives the assured a period of thirty days as days of grace for payment of premium, the days of grace must be computed from the next day after the due date. The day following the due

—Life insurance—Policy of—Age of assured admitted on policy—Company, if can dispute admitted age.

Where according to the rules of a Life Insurance Company, the age of the assured must be ascertained

payable to wife of deceased—If for her own benefit or as trustee for heirs of deceased—Ordinary rule

In the case of policies of life insurance the net-

Lobo, J) PARMESHWARIBAI v. NEHAL CHAND.

173 I.C. 457=32 S.L.R. 138=10 E.S. 212=

A.I.R. 1938 Sind 20

—Life insurance—Question to assured about 'any other health complaints'—Interpretation.

The question to the assured by the medical officer of an insurance company about 'any other health complaints' is not intended to refer to simple headaches, cold or slight fever, or similar minor illness. Such a question must be read in a fair and commonsense way,

INSURANCE.

and must be construed *contra proferentes*. The duty of the proposer is a duty to disclose and this necessarily depends on the knowledge he possesses. (*Lort Williams, J.*) HEMANTA KUMAR DAS v. ALIANZ INSURANCE COMPANY. 177 I.O. 517=11 E.O. 253= A I.R. 1938 Cal. 120.

—Policy of—Construction—Insurance of motor vehicle—Clause giving insurer right to rights of insured in latter's name—Insurer to indemnify insured against legal liability death or injury to passengers—Effect resulting in death of passenger—Suit against insurance company—Maintain CONTRACT—THIRD PARTY. 40 Bc

—Policy—Construction—Reference to prospectus—Permissibility.

Where a policy holder is not seeking to rescind or rectify his contract of insurance contained in the policy issued to him on the ground of fraud or mistake or to recover damages for alleged fraudulent misrepresentation, the prospectus issued by the Insurance Company but not referred to in the policy, cannot legitimately be referred to in order to construe the contract into which he has been induced to enter. (*Derbyshire, C.J. and Panchridge, J.*) SUN LIFE ASSURANCE CO., LTD. OF CANADA v. NILRATAN MOOKERJEE. 68 C.L.J. 131=42 C.W.N. 1197= A.I.R. 1938 Cal. 693.

—Policy—Money payable to "self or wife" meaning and effect—If creates trust in favour of wife of assured.

40 Bom. L.R. 52

INTEREST.

See also (1) C. P. CODE, S. 34, O. 34, Rr. 2 to 7.
(2) CONTRACT ACT, S. 73.
(3) DAMAGES.

—As damages—If and when payable.

Interest before suit can be paid only if there is either express stipulation to pay interest or if a promise to pay interest can be implied or if the case comes within the provisions of the Interest Act of 1839. It can also be paid in cases where the subject matter could be brought within the jurisdiction of Courts of equity on the principles and conditions in which the Courts of equity in England assume jurisdiction. Such interest could not be awarded by way of damages under the provisions of S. 73 of the Contract Act. (*Mitter and Edgley, J.J.*) NIRUPAMA DEVI v. SURABALA DASSI. 42 C.W.N. 1003= A.I.R. 1938 Cal. 618.

—Award of—Power of Court.

Interest for the period prior to the date of the suit may be awarded, if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usage of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to recover interest. (*Sir Shadi Lal.*) BENGAL NAGPUR

INTERPRETATION OF STATUTES.

—Award of—Discretion of Court—Claim to interest on equitable grounds—Delay in suing owing to negligence—Effect.

A decree based on equitable grounds is always one at the discretion of the Court. A claim for the award of interest on equitable interest should not be allowed when there has been great delay on the part of the plaintiff in

—Delay in suing if ground for refusing interest. See SUCCESSION ACT, S. 353.

1938 P.W.N. 186=19 Pat. L.T. 202.

—Discretion of Court—Interest *pendente lite* and future interest—Refusal to award—Omission to give reasons—Interference on appeal—If justified. See SUCCESSION ACT, § 353.

1938 P.W.N. 186=19 Pat. L.T. 202.

—Right to—Suit for rent of shop—Damages on interest for period prior to suit—Right to See LANDLORD AND TENANT—RENT. 1938 P.W.N. 689.

—When suspended—Trust—Conduct of lender.

Interest may be suspended when failure to pay principal is due to such conduct on the part of the lender as prevents the debtor from paying the principal. An injunction obtained by a third party is not *prima facie* such conduct by the lender. (*Wiston.*) PHUNDA LAL L. 1938 A.M.L.J. 48.

ACT (XXXII OF 1839), S. 1, Proviso

to S. 1 applies to a case in which the Court of equity exercises jurisdiction to allow interest. But in order to invoke a rule of equity, it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction. (*Sir Shadi Lal.*) BENGAL NAGPUR RAILWAY CO., LTD. v. RUTTANJI RAMJI. 65 I.A. 66=

I.L.R. (1938) 2 Cal. 72=1938 A.L.J. 169= 47 L.W. 281=32 S.L.R. 374=1938 O.L.R. 119= 19 Pat. L.T. 125=1938 O.W.N. 261= 1938 A.W.R. (P.M.) 52=1938 A.L.M. 167= 1938 O.A. 300=40 Bom. L.R. 746=4 B.R. 374= 10 B.P.C. 216=42 C.W.N. 985=1938 P.W.N. 360= 67 C.L.J. 153=(1938) M.W.N. 646=173 I.C. 15= A.I.R. 1938 P.C. 67=(1938) 1 M.L.J. 610 (P.C.).

INTERPRETATION OF STATUTES.

Alterations in law

Alternative construction.

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—Policy of—Construction—Insurance

death or injury to passengers—Effect of—Accident resulting in death of passengers—Suit for damages against insurance company—Maintainability See CONTRACT—THIRD PARTY, 40 Bom L.R. 155.

—Policy—Construction—Reference to prospectus—Permissibility

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J.J.) RADHE KISHUN v. ADITYA NARAIN SINGH, I.L.R. (1938) A. 243=174 I.C. 499= 1938 A.W.E. (H.C.) 66=1938 R.D. 238= 1938 A.L.R. 295=10 R.A. 593=1938 A.L.J. 1= A.I.R. 1938 A. 151.

—Delay in suing if ground for refusing interest—See SUCCESSION ACT, S. 353.

1938 P.W.N. 186=19 Pat. L.T. 202.
—Interest pendente lite and no award—Omission to give appeal—If justified. See

1938 P.W.N. 186=19 Pat. L.T. 202.
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(9), S. 1, Proviso

case in which the to allow interest, it is necessary in

the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction. (*Sir Shadi Lal*) BENGAL NAGPUR RAILWAY CO., LTD. v. RUTTANJI RAMJI, 65 I.A. 66=

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IN SENATE
JANUARY 19, 1915
RECORDED
INDEXED
JAN 21 1915
U. S. DEPT. OF COMMERCE
BUREAU OF STATISTICS
WASHINGTON, D. C.

40 Bom L.R. 483
Executive authority in the
order of the President
consider.

Where an Act of Congress
gives the President
the power to make an order
It is sought to impose a penalty
imposed by the authority of the
President the charge to consider
properly made and to the
that the authority has acted
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INTERPRETATION OF STATUTES.

to give out what he considers to be the primary meaning of the language used. A Judge must always consider the effect of any construction which he is asked to put on an Act of Parliament, and if he comes to the conclusion that a particular construction leads to a result which he considers irrational or unfair, he is entitled, and indeed bound, to assume that the Legislature did not intend such a construction to be adopted, and to try to

Act.

—Duty of Court—Reference to definitions in other statutes—Permissibility.

It is most dangerous to attempt to interpret a statute by using definitions of words given in other statutes. The duty of the Court is to interpret the definitions in the statute and apply them as exactly as possible. (*Reilly, C. J. and Abdul Ghani, J.*) SUPERINTENDENT, NANDYDRUG MINES, LTD. v. LUCAS

43 Mys H.C.R. 132 = 15 Mys L.J. 563

—English decision interpreting English Act—Value of.

An English case interpreting an Act of Parliament is no guide for the interpretation of a section of an Indian Provincial statute, especially where the wordings in the two Acts are different. (*Davis, J. C. and Lobo, J.*) TARACHAND PRIBHDAS v. EMPEROR,

32 S.L.R. 622 = 175 I.C. 834 =

11 R. 7 = 39 Cr L.J. 668 =

A.I.R. 1938 Sind 116

—English rules of construction of wills and deeds—Rule of construction of foreign statute—Applicability in Mysore.

It would not be at all proper for the Courts in Mysore to feel themselves bound, in interpreting a statutory enactment of that State, by artificial rules of construc-

tion. (*Reilly, C. J. and Abdul Ghani, J.*) CHICKANAKASAPPA = HONNURAMMA.

43 Mys H.C.R. 181 = 16 Mys L.J. 167.

—General and special Acts—Conflict between—Priority—Rule.

It is a clear principle of law that when there is a conflict between a special statute dealing with a special kind

INTERPRETATION OF STATUTES.

RAMPRASAD JAGBANDHOO v. ANANDI BRINDAWAN RAWAT. 174 I.C. 374 = 10 R.N. 377 =

A.I.R. 1938 Nag. 180.

—Harmonious construction—Ambiguity—Construction consonant to other Acts.

In construing a statute one should endeavour to give it a meaning, in all cases of ambiguity, which will make it consonant to rather than in derogation of other RAM

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the effect of modifying the language of the statute

42 C.W.N. 985 = 1938 F.W.N. 380 = 67 C.L.J. 153 =

1938 M.W.N. 646 = 173 I.C. 15 =

A.I.R. 1938 F.C. 67 = (1938) 1 M.L.J. 640 (P.C.).

—Judicial pronouncements—Words construed by Courts—Re-enactment in substantial terms—Effect of—Inference.

According to a well-known rule for the interpretation of statutes, when a provision of law has been given a particular meaning by the Courts, and it is enacted or left substantially unaltered after amendment, it may be assumed that the Legislature has accepted the view taken by the Courts. (*Beaumont, C. J., Brownfield and Norman, J.J.*) EMPEROR v. SOMABHAI GYVINDEHAI.

40 Bom L.R. 1082 = A.I.R. 1938 Bom. 484 (F.B.).

—Jurisdiction of Court—Act giving power to executive authority to make special orders—Breach of order—Validity of order—Power and duty of Court to consider.

Where an Act of Parliament confers upon an authority power to make an order in certain conditions, and it is sought to impose a penalty for breach of an order made by the authority, it is incumbent upon the Court bearing the charge to consider whether the order was properly made and to be satisfied on two points: (1) that the authority has acted reasonably and not capriciously

conditions imposed by (*Beaumont, C. J., J.J.*) EMPEROR v.

—Jurisdiction of Civil Court—Act ousting—Strict construction.

Statutes ousting jurisdiction of the Civil Courts must be very strictly construed. The Civil Courts must be

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—Jurisdiction of Civil Court—Presumption in favour of—When excluded or taken away.

The general principle of law is that every presumption shall be made in favour of the jurisdiction of a Civil Court and that it shall not be taken away except

r. TULJAKAMRAO. 177 I.C. 693 = 11 R.B. 101 =

40 Bom L.R. 461 = A.I.R. 1938 Bom. 372.

—Harmonious construction. Law must be interpreted in a way which will not render one of its provisions entirely nugatory. (*Bose, J.*)

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by express words or by necessary implication. (*Venkata Subba Rao and Abdul Rahman, J.J.*) VEERANNA v. MOCHARANNA. 47 L.W. 42 = 1938 M.W.N. 284 = A.I.R. 1938 Mad 505 = (1938) 1 M.L.J. 406.

— *Literal construction*—If can prevail against clear intention of Legislature.

It is a well recognised canon of construction that the more literal construction ought not to prevail if it is opposed to the intentions of the Legislature as apparent from the statute, and if the words are sufficiently flexible to admit of some other construction by which the intention will be better appreciated. (*Rupchand Bhataram, Ag J.C. Dasbha C. Mehta and Lobo, A.J.C.*) BACHOO KANDERO v. EMPEROR. 32 S.L.R. 185 = 172 I.O. 968 = 10 E.S. 188 = 39 Cr.L.J. 239 = A.I.R. 1938 Sind 1

— *Literal construction*—Rule as to—Limits of.

It is a cardinal rule of construction that a section of a statute must be construed literally unless (1) the section itself is repugnant to the general purpose of the Act, and (2) there is some other section which cuts down its meaning. (*Rupchand Bhataram, Ag J.C. and Lobo A.J.C.*) MINHO v. EMPEROR. 32 S.L.R. 129 = 173 I.O. 325 = 16 E.S. 201 = 39 Cr.L.J. 294 = A.I.R. 1938 Sind 9.

— *Marginal notes and headings*—Reference to. It is undoubtedly permissible to the Court to refer to

by any arrangement made by the authors of the statute. (*Rangnath and Sen, J.J.*) RAMKRISHNA v. BAPURAO. 175 I.C. 518 = 10 E.B. 561 = 40 Bom.L.R. 390 = A.I.R. 1938 Bom 284.

— *Marginal note*—Value of

Marginal note is of no value in interpreting a section. (*Rupchand Bhataram, Ag J.C. and Lobo, A.J.C.*) MINHO v. EMPEROR. 32 S.L.R. 129 = 173 I.O. 325 = 10 E.S. 201 = 39 Cr.L.J. 294 = A.I.R. 1938 Sind 9

— *Meaning of words*—Construction placed by Courts—Re enactment in same terms—Inference.

It is a well established principle to be applied in the construction of statutes that where a certain construction has been placed by the Courts upon words in an Act, and that Act is subsequently re-enacted in a later Act which uses the same words, the Legislature must be taken to have known of the construction placed upon the

174 I.O. 773 = 10 E.B. 499 = 40 Bom.L.R. 324 = A.I.R. 1938 Bom 231 (F.B.).

— *Meaning of words*—'Privilege' and 'right'.

Where the word 'privilege' is coupled with 'right' in a statute it must be held to have a well

It does not mean some advantage or reason of existing procedure a party may in fact to possess, but may be defined as a privilege or immunity in law enjoyed by a persons beyond the common advantages word must be construed in a legal meaning when it is employed as having a loose or figurative meaning. (*Mya Bu and Dunkley, J.J.*) TVAR v. VALLIAPPA CHETTYAR. 1938 Rang.L.R. 176 = 175 I.O. 275 = 10 E.B. 474 = A.I.R. 1938 Rang. 130 (F.B.).

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— *Object of legislation*—Reference to—Duty to have regard to terms of limitation—Duty laid down by Act found impossible of performance—Duty of Court in construing.

A statute should be construed not merely with reference to its language, but also its subject matter and object, and in construing its provisions regard must be had to the express terms of any limitation contained in it. If in the interpretation the Court finds that a duty which is expected to be performed is either impossible of performance and beyond the normal capacity of a reasonable or prudent man, or when performance in the strictest language of the enactment is either idle or impossible, then the enactment must be understood as dispensing with the strict performance of that duty. (*Wassoodro and Samjee, J.J.*) EMPEROR v. GANPAT LAXMAN. 177 I.O. 665 = 11 E.B. 112 = 39 Cr.L.J. 933 = 40 Bom.L.R. 820 = A.I.R. 1938 Bom 427.

— *Plain meaning*—Departure from—When justified. See U. P. AGRICULTURISTS' RELIEF ACT, S. 5 (1). A.I.R. 1938 All. 456.

— *Preamble*—Effect of.

The preamble does not govern plain provisions in the body of the Act. (*Leach, C.J., Varadachariar and Aickell, J.J.*) RANGAREDDI v. DASARADHARASIL REDDI. 11 E.B. (1938) Mad 841 = 176 I.O. 401 = 10 E.M. 769 = 1938 M.W.N. 369 = 47 L.W. 498 = A.I.R. 1938 Mad 441 = (1938) 1 M.L.J. 552 (F.B.).

— *Preamble*—Reference to—Ambiguity.

It is no doubt a principle of construction that the preamble of an Act can be invoked for removing an ambiguity in an Act, but it is equally a well-settled principle that the preamble cannot be invoked for creating an ambiguity in the Act. (*Affler, J.*) JNANENDRA NATH NANDA v. JADUNATH BANERJI. 11 E.B. (1938) 1 Cal 626 = 42 C.W.N. 81 = A.I.R. 1938 Cal. 211.

— *Preamble*—Reference to—Limits.

The preamble may be consulted to solve any ambiguity whenever the enacting part is open to doubt; but where the enacting part is clear, the preamble cannot operate to restrict that meaning. (*Pollock, J.*) BALKISAN v. MS. JATNABAI. 177 I.O. 531 = 11 E.N. 148 = 1938 N.L.J. 168 = A.I.R. 1938 Nag 298.

— *Prior state of the law*—Object of the legislature—Reference to

It is permissible to look into the state of the law at the time an Act is passed and the legislature had in view in introducing a statute provided it is clear that the language of the statute is strained by any attempt to bring it in with the supposed intention of the Legislature. (*Nasim Ali and Mukherjee, J.J.*) MAHAMMED HUSHEEN v. JAMINI NATH. 11 E.B. (1938) 1 Cal 607 = 176 I.O. 41 = 11 E.C. 25 = 42 C.W.N. 38 = A.I.R. 1938 Cal 97

of the pre-very doubts ought to settle at purposes after the order of succession among Hindu heirs, (the Hindu Law of Inheritance Amendment Act). It is desirable to see who were, before the Act, heirs. (S)

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to give out what he considers to be the primary meaning of the language used. A Judge must always consider the effect of any construction which he is asked to put on an Act of Parliament, and if he comes to the conclu-

find some more rational meaning to which the words are sensible (*Braumont, C.J. Broomfield and Norman, J.J.*)

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Act.

If the provisions of law made by the Legislature, under their plain wording, apply to a particular case, Courts cannot avoid giving effect to them merely because the Legislature did not contemplate or have in mind such a case when it drew up the Act in question. (*Hornill, J.*) KRISHNAN NAYAR v. MOIDEEN.

175 L.O. 220 = 10 B.M. 757 =
1937 M.W.N. 1268 = A.I.R. 1938 Mad. 263

—Duty of Court—Reference to definitions in other statutes—Permissibility.

It is most dangerous to attempt to interpret a statute by using definitions of words given in other statutes. The duty of the Court is to interpret the definitions in the statute and apply them as exactly as possible. (*Reilly, C.J. and Abdul Ghani, J.*) SUPERINTENDENT, NANDYDRUG MINS. LTD. v. LUCAS.

43 Mys. H.C.R. 132 = 15 Mys. L.J. 563.

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32 S.L.R. 622 = 175 L.C. 834 =
11 R.S. 7 = 39 Cr. L.J. 668 =
A.I.R. 1938 Sind 116

—English rules of construction of wills and deeds
—Rule of construction of foreign statute—Applicability in Mysore.

It would not be to feel themselves enactment of the tion developed in. interpretation of deeds and wills executed by private persons. It is also unsafe to take a rule for the interpretation of even of a statute in another country and to apply to a statute of Mysore. (*Reilly, C.J. and Abdul Ghani, J.*) CHICKANAKASAPPA v. HONNURAMMA.

43 Mys. H.C.R. 181 = 16 Mys. L.J. 167

—General and special Acts—Conflict between—Priority—Rule

It is a clear principle of law that when there is a conflict between a special statute dealing with a special kind of property and a general statute enacted subsequently and dealing with all kinds of property, it is by the former that the rights of the parties must be governed with regard to the special kind of property. The provision of the special Act must prevail against those of the later Act which is a general one, on the well recog-

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RAMPRASAD JAGBANDHOO v. ANANDI BRINDAWAN RAWAT. 174 I.C. 374 = 10 B.N. 377 =

A.I.R. 1938 Nag. 180.

—Harmonious construction—Ambiguity—Con-

Acts. (*Stone, C.J., Bose and Clarke, J.J.*) MOTIRAM SITARAM v. DAULAT ANVAJI

38 N.L.J. 327 (F.B.).

can modify it.

statute cannot have

the effect of modifying the language of the section which alone forms the enactment. (*Sir Sadi Lal.*) BENGAL NAGPUR RAILWAY CO. LTD. v. RUTTIANJI RAMJI.

65 I.A. 66 = I.L.B. (1938) 2 Cal 72 =

32 S.L.R. 374 = 1938 A.L.J. 169 = 47 L.W. 281 =

1938 O.L.B. 119 = 19 Pat. L.T. 125 =

1938 O.W.N. 261 = 1938 A.W.E. (P.C.) 52 =

1938 A.L.B. 167 = 1938 O.A. 300 =

40 Bom. L.R. 746 = 4 B.E. 374 = 10 R.P.C. 218 =

42 W.N. 985 = 1938 F.W.N. 360 = 67 C.L.J. 153 =

1938 M.W.N. 646 = 173 C.O. 15 =

A.I.R. 1938 P.C. 67 = (1938) 1 M.L.J. 640 (P.C.).

—Judicial pronouncements—Words construed by Courts—Re enactment in substantial terms—Effect of—Inference.

According to a well-known rule for the interpretation of statutes, when a provision of law has been given a particular meaning by the Courts, and it is re-enacted or left substantially unaltered after amendment, it may be assumed that the Legislature has accepted the view taken by the Courts. (*Braumont, C.J., Broomfield and Norman, J.J.*) EMPEROR v. SOMABHAI GUVINDBHAI.

40 Bom. L.R. 1082 = A.I.R. 1938 Bom. 484 (F.B.).

—Jurisdiction of Court—Act giving power to execute authority to make special orders—Breach of order—Validity of order—Power and duty of Court to consider.

Where an Act of Parliament confers upon an authority power to make an order in certain conditions, and it is sought to impose a penalty for breach of an order

the statute have been observed. (*Braumont, C.J., Rangnagar, Wadia and Wazir, J.J.*) EMPEROR v. YARMAHOMED AHMADKHAN.

I.L.B. (1938) Bom. 403 = 176 I.C. 839 =

11 B.E. 53 = 39 Cr. L.J. 792 =

40 Bom. L.R. 483 = A.I.R. 1938 Bom. 338 (F.B.).

—Jurisdiction of Civil Court—Act ousting—Strict construction.

Statutes ousting jurisdiction of the Civil Courts must be very strictly construed. The Civil Courts must be presumed to have powers except to the extent that they have been taken away expressly by some other statute. It must be presumed that the Legislature does not alter the law beyond what it explicitly declares either by express words or by necessary implication. (*Stone, C.J. and Nyoga, J.*) RAMKARAN BONDURU. SURAJMAL

81 Nag. 268 =

1938 Nag. 60

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by express words or by necessary implication. (*Venkata Subba Rao and Abdul Rahman, J.J.*) **VEERANNA v. NOCHARANNA**, 47 L W 42=1938 M.W.N. 234= A.I.R. 1938 Mad 505=(1938) 1 M.L.J. 406.

—*Literal construction*—If c . . .
clear intention of Legislature.

It is a well recognised canon of more literal construction ought to be opposed to the intentions of the Legislature as apparent from the statute, and if the words are sufficiently flexible to admit of some other construction by which the intention will be better appreciated. (*Rupchand Bilaram, Ag J.C. Dasiba C. Mehta and Lobo, A.J.C.*) **BACHOO KANDERO v. EMPEROR**.

32 S.L.R. 185=172 I.C. 968=111 R.S. 188= 39 Cr.L.J. 239=A.I.R. 1938 Sind 1

—*Literal construction*—Rule as to—Limits of.

It is a cardinal rule of construction that a section of a statute must be construed literally unless (1) the section itself is repugnant to the general purpose of the Act, and (2) there is some other section which cuts down its meaning. (*Rupchand Bilaram, Ag J.C. and Lobo A.J.C.*) **MINHO v. EMPEROR**.

32 S.L.R. 129= 173 I.C. 325=16 R.S. 201= 39 Cr.L.J. 294=A.I.R. 1938 Sind 9

—*Marginal notes and headings*—Reference to.

It is undoubtedly permissible to the Court to refer to marginal notes and headings as aids in interpretation of statutes. But where a section of the statute is plain on the express language of it, the plain meaning of that section should not be curtailed by the marginal note or by any arrangement made by the authors of the statute (*Rangnagar and Sen, J.J.*)

175 I.C. 518=10 R.B.

—*Marginal note*—Value of

Marginal note is of no value in interpreting a section (*Rupchand Bilaram, Ag. J.C. and Lobo A.J.C.*) **MINHO v. EMPEROR**.

32 S.L.R. 129=173 I.C. 325=

has been placed by the Courts upon words in an Act, and that Act is subsequently re-enacted in a later Act which uses the same words, the Legislature must be taken to have known of the construction placed upon the

174 I.C. 773=10 R.B. 499=40 Bom L.R. 324= A.I.R. 1938 Bom 231(F.B.).

—*Meaning of words*—'Privilege' and 'right'

Where the word 'privilege' is coupled with 'right' in a statute it must be held to have a well It does not mean some advantage or reason of existing procedure a party may in fact be in possession, but may be defined as a right or immunity in law enjoyed by a person beyond the common advantages

TYAR v. VALLIAPPA CHÉTTYAR.

1938 Rang.L.R. 176=176 I.C. 275=10 R.B. 474= A.I.R. 1938 Rang. 130 (F.B.).

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—*Object of legislation*—Reference to—Duty to have regard to terms of limitation—Duty laid down by Act found impossible of performance—Duty of Court in construing.

It. If in the interpretation the Court finds that a duty which is expected to be performed is either impossible of performance and beyond the normal capacity of a reasonable or prudent man, or when performance in the suitable language of the enactment is either idle or impossible, then the enactment must be understood as dispensing with the strict performance of that duty. (*Wastodev and Samet, J.J.*) **EMPEROR v. GANPAT LAXMAN**.

177 I.C. 665=11 R.B. 112= 39 Cr.L.J. 933=40 Bom L.R. 820= A.I.R. 1938 Bom 427.

—*Main meaning*—Departure from—When justified. See U. P. AGRICULTURISTS' RELIEF ACT, S. 5 (1). A.I.R. 1938 All. 456.

—*Preamble*—Effect of.

The preamble does not govern plain provisions in the body of the Act. (*Leach, C.J., Varadachariar and Mockett, J.J.*) **RANGAREDDI v. DASARADHARAM REDDI** I.L.R. (1938) Mad 841=176 I.C. 401= 10 R.M. 769=1938 M.W.N. 369=47 L.W. 498= A.I.R. 1938 Mad 441=(1938) 1 M.L.J. 552 (F.B.).

—*Preamble*—Reference to—Ambiguity.

It is no doubt a principle of construction that the preamble of an Act can be invoked for removing an

I.L.R. (1938) 1 Cal 626=42 C.W.N. 81= A.I.R. 1938 Cal. 211.

—*Preamble*—Reference to—Limits.

1938 N.L.J. 168=A.I.R. 1938 Nag 298.

—*Prior state of the law*—Object of the legislature—Reference to.

It is permissible to look into the state of the law at Amending Act is passed and the legislature had in view in introducing construing a statute provided it is that the language of the statute is strained by any attempt to bring it in with the supposed intention of the Legislature. (*Nasim Ali and Mukherjee, J.J.*) **MAHAMMED HUSHEN v. JAMINI NATH** I.L.R. (1938) 1 Cal 607= 176 I.C. 41=11 R.C. 25=42 C.W.N. 38= A.I.R. 1938 Cal 97

of the pre- very doubts ought to settle. but purports to alter the order of succession among Hindu heirs, (the Hindu Law of Inheritance Amendment Act), it is desirable to see who were, before the Act, heirs. (S)

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scope of main provisions.

A proviso in a statute is properly used to indicate that a general provision to which it relates does not apply to instances which the proviso cuts out of that general provision. A proviso is also used at times to quiet misapprehensions that rights have been affected by the provisions to which the proviso relates in a way unintended by the legislature. On the other hand it is quite illegitimate to interpret a proviso as extending the content of the provisions to which it relates, if there is an ambiguity in the general provision to which the proviso relates, the proviso may sometimes be used to help the Court to determine which of the two ambiguous interpretations of the main provision is correct. (*Rutley, C.J. and Nagaswara Iyer, J.*)

VENKATAPATHIAH v. SARASWATHIAMMA.
11 Mys.H.O.R. 361=10 Mys L.J. 273.

—Reference to former Act—Permissibility. See AGRA TENANCY ACT (1926)—INTERPRETATION.
A.I.R. 1938 All 398 (F.B.).

—Reference to other statutes.

It is always dangerous to seek to construe one statute by reference to words of another. (*Lord Wright.*)

—Repeal by implication.

An assumption of repeal by implication is not favoured. (*Niyogi, J.*) SHRIDHAR v. GANESH.

1938 N.L.J. 133.

—Repugnancy between two provisions of law—What amounts to.

In order that two provisions of law may be called repugnant to one another they should be so contradictory that it would be impossible to carry out both of them; in other words, if one says "do" and the other says "do not." (*Mahomed Noor and Chatterji, J.*) VISWA NATH NARAYAN SINGH v. HARIHAR GIR.

178 I.O. 279=5 B.R. 73=
19 Pat.L.T. 760=1938 P.W.N. 765.

—Restrictive legislation—Act restricting existing

v. BHANU.

1938 N.L.J. 15

—Retrospective effect.

A statute which deals with substantive rights would not ordinarily be construed as retrospective in its operation. It would operate only on facts which came into existence after the statute is passed, unless a contrary intention can be gathered either from express words, or by necessary implication. (*Nasim Ali and Mukherjee, J.*) MAHAMMED HUSHEEN v. JAMINI NATH.

I.L.R. (1938) 1 Cal 607=176 I.O. 41=
11 B.C. 25=42 C.W.N. 38=A.I.R. 1938 Cal 97.

—Retrospective operation—Acts impairing contracts and affecting vested rights—Duty and practice of Courts.

act of impairing contracts and strictly construed, and in the must lean against giving retroactive provisions. Unless there is

context or objects of the Act showing a contrary intention, the duty and practice of Courts of justice is to presume that the Legislature enacts prospectively and not retrospectively. (*Stone, C.J. and Digby, J.*) BHAGWANTRAO v. DAMODAR.

I.L.R. (1938) Nag. 91=20 N.L.J. 285=
A.I.R. 1938 Nag. 112.

—Retrospective operation—Amending Act.
Where it is clear that an amending Act is more than declaratory, it cannot be given retrospective effect. (*Leach, C.J., Varadarachariar and Mookit, J.*) RANGAREDDI v. DASARADHARAMI REDDI.

I.L.R. (1938) Mad 841=175 I.O. 401=
10 B.M. 769=1938 M.W.N. 369=47 L.W. 498=
A.I.R. 1938 Mad. 441=(1938) 1 M.L.J. 552 (F.B.).

—Retrospective operation—Clear words—Necessity. See T.P. ACT, S. 92.

A.I.R. 1938 Rang. 308 (F.B.).

—Retrospective operation—Rule.

—Retrospective operation—Rule as to.

The general rule of law is that an Act has no retrospective effect unless it is so specifically provided but there are certain exceptions; for instance, declaratory statutes passed to remedy defects in form have retrospective effect. Whenever the intention is clear that the Act should have a retrospective operation, it must unquestionably be so construed, even though the consequences may appear unjust and hard. (*Thomas, C.J., Zia-ul-Hasan and Hamilton, J.*) B. KUNDAN LAL v. FAOIR BAKSH.

174 I.O. 714=10 B.O. 264=
1938 O.W.N. 401=1938 O.A. 270=
A.I.R. 1938 Oudh 127 (F.B.).

—Retrospective operation—Test to decide.

The canons of construction which are laid down in order to decide whether an Act is retrospective or prospective are: (1) There is no presumption that the statute which takes away any existing right is intended to apply to a state of facts which came into existence before its commencement. (2) When the effect of the statute would be to make a transfer valid which was previously invalid, to make an instrument, which had no effect at all and from which the party had liberty to depart as long as he pleased, binding, the *prima facie* intention of the Act is that it is not to be retrospective. (3) If it is a necessary implication from the language employed that the Legislature intended a particular section to have a retrospective operation, the

Courts will give it such an operation because it is obviously competent for the Legislature if it pleases in its wisdom to make the provisions of an Act retrospective. (4) But if, on the other hand, the language employed by the Legislature is ambiguous, or not clear and explicit, the Court must not give a construction to the new Act which would take away vested rights, in other words, should treat the Act as prospective. (*Wart and Manohar Lal, J.*) JAGDAMBA PRASAD v. ANADI NATH.

17 Pat. 460=179 I.O. 273=11 B.P. 69=
19 Pat.L.T. 534=4 B.R. 697=A.I.R. 1938 Pat. 357.

JAINS. See CUSTOM AND HINDU LAW.

Adoption
Applicability.
Succession etc.

JAMMU AND KASHMIR CIVIL PROCEDURE CODE, Ss. 72 and 60—Lands held by Assams and occupancy tenants—Temporary alienation of—Permissibility.

Lands held by Assam exempt from attachment C. P. Code, and a temporary 72 of that Code is, therefore, not permissible (*Kichlu and Waur, J.J.*) **SANTAMAL DUNICHAND v. AHMED ALI.** 40 P.L.R. J. & K. 53

JAMMU AND KASHMIR COURT OF WARDS REGULATION, Ss. 15 and 16—Contract by ward—Subsequent ratification—Validity.

A contract by a person wardship is void ab initio and ratified by him subsequently. (*Lajpat Rai Anand v. Lachman Singh Ji.*) 40 P.L.R. J. & K. 34.

JAMMU AND KASHMIR COURT OF WARDS REGULATION, Ss. 15 and 16—Contract by ward—Subsequent ratification—Validity.

Where a person marries a girl under 14 years of age it is no defence that he did so under 14 years or that from her a that she was of greater age (*A State v. Ahmed Lone.*)

JAMMU AND KASHMIR ALIENATION REGULATION, S. 16—Offence of overloading—Sentence of fine—Considerations.

In imposing a fine on a lover driver for the offence of delivery of possession was performed has to be accepted as conclusive, but that would not make the will valid. Further such a will, to be effective, must be delivered to

JAMMU AND KASHMIR ALIENATION REGULATION, S. 16—Offence of overloading—Sentence of fine—Considerations.

JAMMU AND KASHMIR ALIENATION REGULATION, S. 16—Offence of overloading—Sentence of fine—Considerations.

JAMMU AND KASHMIR ALIENATION REGULATION, S. 16—Offence of overloading—Sentence of fine—Considerations.

a widow or the control of such alienations by reversioners. The reversioners may challenge the alienation by a widow if they are allowed to do so by their personal law or by any custom. Where, therefore, the parties are Hindus, the reversioner could challenge the right of the widow to alienate her occupancy rights in the land provided the alienation was without consideration and legal necessity (*Kichlu and Waur, J.J.*) **NAND SINGH v. MST. ACHHRI.** 40 P.L.R. J. & K. 44.

JEWISH LAW—Kibitz—Doctrine of—Applicability in British India.

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JEWISH LAW—Kibitz—Doctrine of—Applicability in British India.

JOINT TORT-FEASORS.

capable of delivery to the donees or legatees. (*Beaumont, C.J. and Wadia, J.*) **MESSA v. MESSA.**

MESSA v. MESSA. R.B. 121 = 8 Bom. 394.

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MESSA v. MESSA. R.B. 121 = 8 Bom. 394.

JUDICIAL OFFICERS.

such performance enures, of the permanence of that term is undertaken by an independent contractor who acts as such and not as a servant or agent of the other party to the contract, the liability attaches to such independent contractor, but if such other party retains in his own hands the control

their acts are their acts so as to make them joint tortfeasors.

B. J. Wadia, J.—In order to constitute two persons joint wrongdoers they must act together in furtherance of a common design, or one of them must aid, counsel or direct the other, or one must be the servant or agent of the other, or one man must have allowed another to meddle negligently in an act for which the former was really answerable. But it is a well-known rule that not all concurrent wrongdoing is necessarily joint. When the wrongful acts are separate and independent and yet combine to cause the same damage, there is a separate *injuria* in respect of each wrongful act, though they produce the same *damnum*, and each of the two persons who has committed an *injuria* is independently liable on that *injuria* as on a distinct cause of action. The mere fact that both of them act in reference to the same subject matter cannot make them joint tortfeasors, if it is not shown that they commit the acts in furtherance of a common design between them to commit the tortious act. (*Beaumont, C. J. and Wadia, J.*) CALICO PRINTERS ASSOCIATION v. MITSUBISHI SHOJI KAISHA, LTD. 177 I.O. 913—40 Bom.L.R. 661—A.I.R. 1938 Bom. 413.

JUDICIAL OFFICERS—Duty of.—Need for absolute impartial position—Principles—Judicial Officer debtor of one of the parties—Competency to deal with matter between parties without disclosing same.

Persons exercising entirely impartial position interest, pecuniary or in the litigation, and they that any bias in favour of one side or the other can be imputed to him. Actual bias need not be proved, if the relationship is such that bias may seem likely. It is impossible to say that a debtor is not, from the nature

the fact at the time.

Held that the officer was not competent to entertain the taxation and the taxation was therefore bad *ab initio* (*Beaumont, C. J.*) SHAMDASANI v. CENTRAL BANK OF INDIA, LTD. 177 I.O. 931—40 Bom.L.R. 904—A.I.R. 1938 Bom. 431.

JUDICIAL OFFICERS' PROTECTION ACT (XVIII of 1850), B. 1—Protection under—Limits—Jurisdiction—Meaning of—Order for search by Magistrate—Search carried out by police.

By S. 1 of the Judicial Officers' Protection Act, a judicial officer is protected if he made the order in the discharge of his judicial duties whether or not within the limits of his jurisdiction, provided that he at the time, in

JURISDICTION.

good faith, believed himself to have jurisdiction to pass the order. 'Jurisdiction' in the section is to be taken in the sense of authority or power to act in the matter and not in the sense of authority or power to act in a particular manner. Any person executing such an order within the 'jurisdiction' of a judicial officer is equally

even though the prosecution with reference to which the order was made, ultimately failed. (*Nasim Ali and Mukherjee, J.J.*) SEWALRAM AGARWALLA v. AEDUL MAJID. I.L.R. (1938) 1 Cal. 581—42 C.W.N. 50—A.I.R. 1938 Cal. 177.

JURISDICTION.

See also C. P. CODE, S. 9.

Absence of.

Cause of action.

Civil Court.

Civil and Revenue Courts.

Determination.

Forum to set aside decrees without Jurisdiction.

Non resident foreigners.

Pecuniary jurisdiction.

Place of suing.

Revenue Court.

Special tribunal.

—Absence of—Absence and inactivity of party—Effect of.

Even the consent of parties cannot confer jurisdiction where it does not exist, much less would be absence of a party or his inactivity be sufficient to legalize what is *ab initio* illegal. (*Addison and Din Mohammad, J.J.*) INTIZANIA COMMITTEE v. CENTRAL BANK OF INDIA LTD. A.I.R. 1938 Lah. 129.

—Cause of action—Promissory note payable on

CL. 12. 40 Bom.L.R. 252.

—Civil Court—Acts of special tribunal created by special Act for special purpose—Power to question.

The Civil Court has power to inquire into the ques-

ing its powers under the statute of its creation must be vigilant to see that it does not exceed its jurisdiction and thus encroach on the province of the Civil Court's jurisdiction. The only authority that is competent to decide whether a special tribunal has acted strictly within the limits of its authority or not is the Civil Court. (*Niyogi, J.*) TILAK RAM v. GANPAT SAHAI 1938 N.L.J. 17—A.I.R. 1938 Nag. 373.

—Civil Court—Bar of suit—Acts of executive authority in exercise or under colour of statutory powers—Right of subject to resort to Civil Court for redress.

When executive authorities in the exercise or under colour of statutory powers interfere with the person or property of the subject, improperly or in excess of the

JURISDICTION.

limits authorised by law, the subject has the right to resort to the Civil Court, unless its jurisdiction has been taken away by express words or by clear implication. (*Varadachariar and Pandrang Res. Jf.*) MASK & CO. v. SECRETARY OF STATE. 1938 M.W.N. 341—47 L.W. 606—A.I.R. 1938 Mad. 608.

—*Civil Court—Expulsion of member from club—Interference—Grounds—Member expelled on resolution passed at meeting—Reasons for expulsion not discussed at meeting—Rule authorising expulsion without assigning reason—Power of Court to interfere.*

To deprive a person of his position as a member of a social club is a very serious and grave measure. But a club is undoubtedly an autonomous institution and a Court of law will not lightly interfere with its action in expelling a member unless it has violated the recognized rules of procedure in that connection or those of natural justice. Before a member is expelled, there must be due inquiry, the member concerned must have notice of what is accused of and must have an opportunity of being heard, and the decision to expel must be honestly arrived at after he has had a full opportunity of being

persons the inference that objectionable conduct has been established or that there are sufficient reasons for

of the reasons for such expulsion is illegal and *ultra vires* although the rule of the club says that they need not assign any particular reason for excluding any member whose presence in the club is considered detrimental to its interests. The omission to discuss the reasons for the expulsion is a flagrant abuse of the rule of the club and justifies interference by the Civil Court. (*Wassundew, Jf.*) AMBALAL SARABHAI v. PHIROZ H. ANTIA. 40 Bom L.R. 1213

—*Civil Court—Ghatwal—Fitness to hold office—Power to decide*

Per *M-nohar Lall, J*—The decision of fitness for the post of a Ghatwal must ordinarily rest with the executive authorities subject to this important reservation that if the executive has simply made a pretence of dealing with the question of the fitness of the Ghatwal who claims to be recognised as the next Ghatwal and declare him unfit in an arbitrary manner or in a manner which the law would not recognise then the Civil Courts are free to interfere.

Per *Chatterji, J.*—Appointment of Ghatwal is primarily an executive job. If the executive appoints a wrong man while dismissing the claims of a right person, the Civil Court can at the most give such right person a mere declaration that the appointment made is bad. But the Court cannot force the executive authorities to remove the one and appoint the other instead. A mere declaration therefore would be infructuous if the executive authorities, for reasons of their own, ultimately choose not to act upon that declaration. Such declaration the Court should not grant. (*M-nohar Lall and Chatterji, Jf.*) JOGENDRA NARAIN v. RADHA PRASAD. 17 Pat 398=175 I.O. 854=11 Pat L.T. 519=4 B.B. 633=11 B.P. 20=41 R. 1938 Pat. 245

—*Civil Court—Infringement of statutory right—Cause of action disclosed—Duty to entertain claim—*

JURISDICTION.

Suit for damages by servant of Municipality dismissed in violation of rules—Maintainability. See BOMBAY MUNICIPAL BOROUGH ACT, S. 33.

39 Bom L.R. 1269.
—*Civil Court—Municipal Board—Exercise of powers by—Suit in Civil Court—Competency.*

Where a local authority, such as a Municipal Board, is invested with discretionary powers by the statute creating it, a Civil Court can interfere in cases where such powers are exercised in a capricious, wanton and arbitrary manner or in an unreasonable manner. (*Ganga Nath, J.*) GOVIND DEOJI v. MUNICIPAL BOARD OF BINDERABAN. 174 I.C. 445=11 B.R. 577=1938 A.L.R. 273=1937 A.W.R. 1203=1937 A.L.J. 1358=41 B. 1938 A. 110.

—*Civil Court—Order of Collector within his revisional jurisdiction—Revisional powers of Civil Court*

Civil Courts cannot exercise revisional jurisdiction in respect of any order of the Collector which is within his revisional jurisdiction and cannot consider whether such

11 B.R. 577=1938 A.L.R. 273=1937 A.W.R. 1203=1937 A.L.J. 1358=41 B. 1938 A. 110.
A.I.R. 1938 Mad 318=(1938) 1 M.L.J. 187.

11 B.R. 211=1938 A.L.J. 686=1938 A.W.R. (H.C.) 458=A.I.R. 1938 All. 420.

—*Civil Court—Power to reinstate Ghatwal properly dismissed*

The Court cannot reinstate a person in the Ghatwal land who has been properly dismissed from the office. (*M-nohar Lall and Chatterji, Jf.*) JOGENDRA NARAIN v. RADHA PRASAD. 17 Pat 398=175 I.C. 854=19 Pat L.T. 519=4 B.B. 633=11 B.P. 20=41 R. 1938 Pat. 245.

—*Civil Court—Suit for possession—Plaintiff coming to Court on strength of right of succession on death of last tenant*

Where the relationship of landlord and tenant does not exist between the parties, and the plaintiffs come to the Court on the strength of their right of succession which devolves upon them on the death of the last tenant the suit is cognizable by a Civil Court. (*Kichlu and Wazir, Jf.*) KHUSHIA v. BAGU. 40 P.L.R. J & K 40

—*Civil and Revenue Courts—Claim for share of profits as co tenants—Denial of tenancy See AGRA TENANCY ACT, § 230*

1938 A.W.R. (H.C.) 326.
—*Civil and Revenue Courts—Collectorate partition—Power of Civil Court to re-open or alter at the instance of co sharer who was party to such partition See BENGAL ESTATES PARTITION ACT, SS 22 AND 25.*

11 Pat L.T. 843.
—*Civil and Revenue Courts—Joint Hindu family—Fixed rate tenancy owned by—Alienation by one member—Suit to set aside and to declare that it is not binding on the family—If excluded from Civil Courts. See AGRA TENANCY ACT, SS. 99 AND 121.*

1937 A.W.R. 919=A.I.R. 1938 All. 17.
—*Civil and Revenue Courts—Litigation in Civil Court for long time—Findings as to respective shares*

JURISDICTION.

refused to accept them. Thereupon C instituted a suit at Raipur against B and other indorsers.

Held, that the only cause of action in defendants in the case were jointly liable was of action on the principle contract, that is the contract in which the drawer A was liable as the principal debtor. The rest were all liable as sureties and their liability being co-extensive with that of the principal debtor the cause of action against them when sued

par and no part of it arose at Raipur because firstly the hundis were drawn at Nagpur, secondly notice of dishonour under §. 35, Negotiable Instruments Act, had

Revenue Court—Duty to give effect to possession obtained through Civil Court—Limits—Sale of grove in contravention of Government Notification 521/1 A 93 of 1932

as either timber or standing timbers or produce of land. A Civil Court can ord the latter but not of the former. Where sells a grove and the purchaser obtain though ordinarily Revenue Courts cannot effect to such possession obtained through yet where the civil Court had no jurisdiction, the Revenue Court can refuse to give effect to possession obtained under such a sale. (*Mehra, J.M.*) BIR BAHADUR RAI v. JAGDHAR. 1938 RM 744—1938 A.W.R. (B.R.) 356—1938 A.L.J. (Supp.) 123

Revenue Court—Tenant illegally ejected—Subsequent introduction of new? Remedy of ejected tenant—Su Revenue Court against landlord Necessity for civil suit See S 108 (10) 1937 A.W.R.

Special tribunal appoint Court's jurisdiction. See C P CODE S 9—SPECIAL TRIBUNAL. A.I.R. 1938 Rang. 392

JUS TERTII. See (1) EJECTMENT. (2) EVIDENCE ACT, S 116.

Plea of—When open—Suit for possession—Title of true owner already adjudicated upon

KUMAUN.

Small Cause Court.

—S. 14 (h)—Suit by wife against husband for maintenance amount—If exempt. 1106.

A suit for recovery of money can in no sense be treated as a suit to enforce a contract, unless the contract

coins. Therefore a suit for the recovery of a even though it be not nizable by the Court of not a suit for specific (*Mehra and Lobo, J.J.*) 175 I.O. 142=

10 R.S. 286—A.I.R. 1938 Sind 106.

—S. 24—Scope—Security—Amount of The purpose of S. 24 is to allow the Court power

section but excessive or punitive security cannot be demanded (*Davis, J.C. and C. Mehra, J.*) GUSTAD BAHRAM v. A SAID 177 I.O. 780—11 R.S. 50 (2)—A.I.R. 1938 Sind 191.

tely choosing party to move

A.I.R. 1938 Sind 106. KUMAUN—Pre-emption—Nayabad grant—Transfer—If gives rise to right of pre-emption—Who can pre-empt

When the Government as the owner of the unmeasured

was not carved out of the village or measured portion but only out of the government or unmeasured land. Until it is included in the village at the next settlement, it would retain its separate character (*Iqbal Ahmad, J.*) BISHAN SINGH GAUR v. P. R. SHERRED. 177 I.O. 857—1938 A.I.R. 797—11 R.A. 229=

34= 529.

has an existing right and that, that right has not been village in Kumaun consisted of two portions, a

KUMAUN TENURES.

portion which constituted the village proper and consisted of *abadi* and the cultivated land, and an unmeasured portion consisting of a large area of land in which the residents of the village had grazing, timber and some other rights. This portion is the property of the Government. (*Iqbal Ahmad, J.*) BISHAN SINGH GAUR v. P. R. SHERRED. 177 I.C. 857=1938 A.L.R. 797=

11 B.A. 223=1938 A.L.J. 711=

1938 A.W.R. (H.C.) 464=A.I.R. 1938 ALL. 529.

KUMAUN TENURES—Gaon Sanjait Parat Bahak land—Nature of.

Gaon Sanjait Parat Bahak land is uncultivated waste land which is measured but on which is assessed (*Collister and Baijap, J.J.*) v. NAND RAM. 174 I.C. 470=1938 A.W.R. (H.C.) 48=1

1938 A.L.R. 282=1938 A.L.J. 4=

1938 A.L.R. 282=1938 A.L.J. 4=

A.I.R. 1938 ALL. 136.

—Khaekari village—Pucca and kachcha khaekari—Origin, status and rights of.

There are two distinct tenures called by the same name "Khaekari" in Kumaun Division. One class of tenure is the under proprietary khaekari, that is, pucca khaekari, and the other the occupancy khaekari or kachcha khaekari. The first class consists of ex-proprietors who have still got under-proprietory interests in the land and are superior to ordinary occupancy tenants,

small sum in addition to the quota of revenue due from the land recorded in their names. This small sum is paid as *malikana* to the hissedar or proprietor, who has, however, no power to interfere with the pucca khaekari or his land, waste or cultivated. Where the land granted was already held in propriety by others, those occupant proprietors, if they continued on the

rested with the original occupants, who were now termed khaekars or occupants in distinction from *thaiwan* or proprietor. If the grantee did not at once exercise to take part of the village into his own immediate possession, he was subsequently debarred from getting a footing there at all, and remained entitled to his normal dues. Where the grantee or *sayana* or hisse portion of the estate into his immediate cultivation village became a kachcha khaekari village, the grantee did not at once so exercise his village became a pucca khaekari village.

(*Collister and Baijap, J.J.*) JAINT SINGH v. NAND R.

1938 A.L.J. 4=174 I.C. 470=1938 E.D. 153=

1938 A.W.R. (H.C.) 48=10 B.A. 579=

1938 A.L.R. 282=A.I.R. 1938 ALL. 136.

—Malguzar or Padhan—Status and functions of—Land held by—Nature and incidents of—If khud-kash—Hissedari rights.

There is usually in the villages of Kumaun a padhan

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Oh. I-A.R. 4.

padhan-hissedar of padhanchari or malguzari land in a khaekari village is not a holding of khudkash. He holds it as a sirtan and not with hissedari right in it. (*Collister and Baijap, J.J.*) JAINT SINGH v. NAND RAM. 1938 A.L.J. 4=174 I.C. 470=

1938 E.D. 153=1938 A.W.R. (H.C.) 48=

10 B.A. 579=1938 A.L.R. 282=

A.I.R. 1938 ALL. 136.

—Pucca Khaekari—Absence of ghar-padhan village—Village being hamlet of kachcha khaekari—If conclusive of kachcha khaekari nature.

ar-padhan in pucca

'sarily follow that

in a village; that

lage. Nor does the

a kachcha khaekari

village conclusive that the former is also a kachcha khaekari. When the two are separate entities, and have continued to be separately assessed, the incidents of the one should not be made necessarily to apply to the other. (*Collister and Baijap, J.J.*) JAINT SINGH v. NAND RAM. 174 I.C. 470=1938 E.D. 153=

1938 A.W.R. (H.C.) 48=10 B.A. 579=

1938 A.L.R. 282=1938 A.L.J. 4=

A.I.R. 1938 ALL. 136.

—Pucca khaekari village—Death of khaekar without direct heirs—Right to holding of deceased—

manity of khaekars and not to the hissedars. The mere fact that a hissedar has effected an entry into the village and got some khudkash possession should not on principle affect the status of the village or of the remaining khaekars so far as the remaining lands are concerned. There is no equity in holding that the whole body of under-proprietory cultivators should be or position merely by a hissedar

one holding, and if a zamindar

of his under-proprietors, there is

the conclusion that all the other under proprietors should be reduced to the status of occupancy tenants. The status of the village cannot thereby be reduced to that of a kachcha khaekari village. (*Collister and Baijap, J.J.*) JAINT SINGH v. NAND RAM. 174 I.C. 470=1938 E.D. 153=

1938 A.W.R. (H.C.) 48=10 B.A. 579=

1938 M.W.N. 804.
LAHORE HIGH COURT RULES AND ORDERS, VOL. 5, CHAP. I A.R. 4—Judges sitting in Letters Patent appeal—Jurisdiction to grant extension of time.

Extension of time in case of a Letters Patent appeal filed after the period of limitation under R. 4 of Chap. I-A, Vol. 5 of the Rules and Orders of the Lahore High

admitting the

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(*Young, C. J.*)

OFFICIAL

138 Lab. 328=

40 P.L.R. 1060=A.I.R. 1938 Lab. 325.

as sirtan of the state as hissedar. The holding by a

LAMBARDAR.

LAMBARDAR—*Conviction of lambardar under S. 193, I. P. Code—Rights of other members of family—If affected.*

Conviction of a lambardar under S. 193, I. P. Code is not in itself sufficient to debar other members of the family from their right to succeed to the lambardari. (*Garbett, F. C.*) **ISSA v. FATEH MAHOMED.**

17 L.L.T. 10.

—*Hereditary rights.*

Hereditary rights in *lambardaris* are to be guarded jealously; and the line of succession may be broken on financial grounds only when the safety of the collection of the land revenue cannot be secured. (*Garbett, F. C.*)

LAL DIN v. RAHMAT

17 T. T. 13

—*Right to share—If alien by co-sharers—If alien*

A lambardar is even if the co-sharers the treasury, because it be enforced always. (*M.*) **TARA SINGH v.**

1938 A.L.

LAND ACQUISITION

—*Land—If includes Government—Compensation for building only—If comes under the Act.*

...

1938 A.W.B. (H.C.) 811—1938 A.L.J. 1171.

—*Ss. 4 and 6—Notifications under—Lapse of some years between notifications under S. 4 and those under S. 6—Effect—Proceedings—If illegal and void.*

Acquisition proceedings cannot be held to be illegal and void by reason of the notification under S. 6. In the case of schemes for which the revision of which need not be delay and it is not open to the C. proceedings as illeg. (*Wassoodew, J.J.*) **PAI STATE**

39 Bom.L.L.

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LAND ACQUISITION ACT (1894). S. 11.

J.J. PARSHOTTAM v. SECRETARY OF STATE.

174 L.C. 67—10 R.B. 420—39 Bom.L.R. 1257—

A.I.R. 1938 Bom. 148.

—*Ss. 4 and 6—Scope—Acquisitions for Municipality for carrying out scheme—Alteration in scheme between first and final notifications—Effect—If deprives Government of power to go on with acquisition—Proceedings—If illegal or ultra vires—Test—Opinion of Local Government.*

Under the Land Acquisition Act, it is the Local Government that has to be satisfied as to the existence of a public purpose. In the case of an acquisition for a Municipality to enable it to carry out a scheme, Government is not deprived of the power to go on with the

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10 R.B. 420—39 Bom.L.R. 1257—

A.I.R. 1938 Bom. 148.

... are made. A notification under S. 6 does not therefore become illegal because it seeks to acquire lands for the purpose of recouping the cost of the scheme. Where the Municipality or public body has power conferred upon it under the statute creating it, to

the owner as required by S. 9, Cl. (3), and in the

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RAHIMBUX

72 S.L.R. 8—

1938 Sind. 6.

—*Inam land*

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the several interests must not be based on hypothetical grounds. Any remote interest should not be taken into consideration. In the case of an inam village granted under a sanad providing that the inam should continue in the family so long as there may be in exist-

LAND ACQUISITION ACT (1894), S. 13.

LAND ACQUISITION ACT (1894), S. 23.

best a remote contingent interest, the chance of the inam coming to an end by failure of the male line. Such an interest or chance can scarcely be appreciable by a money value or a money payment. The inamdar is therefore entitled to the whole compensation money without deduction. (*Rangnagar and Macklin, J.J.*)
MAHADEV WALKRISHNA v. DT. DEPUTY COLLECTOR, POONA
 176 I.O. 612-11 R.B. 44-
 40 Bom.L.R. 432-A.I.R. 1938 Bom 325.

—S. 18—Decision of Collector that government is the owner of site—Award of compensation for building alone—Reference to District Judge—District Judge, if has jurisdiction to entertain reference.

Where in respect of certain Bungalows, both the government as well as the owner, claimed the ownership

tion Act is competent and the District Judge has jurisdiction to deal with such a reference. (*Harries and Mitra, J.J.*)
SECRETARY OF STATE v. ALLAHABAD BANK LTD
 1938 A.W.R. (H.O.) 755-
 1938 A.I.J. 1161.

—S. 18—Reference—District Judge returning reference on the ground that he has no jurisdiction—Appeal to High Court if competent—Conversion into

—S. 23—Compensation—Agreement between Government and claimant for calculated on rental basis—Assessment of compensation.

Where there is an agreement between the Government and a person claiming compensation under the Land Acquisition Act that the claimant would get the price of the holding calculated on a rental basis at a certain sum per month plus the statutory compensation, the compensation will be calculated on the net value of the property and such net value can be ascertained by deducting the usual deductions for cess and ground rent. (*Wort and Manohar Lal, J.J.*)
SECRETARY OF STATE v. SITAL PRASAD
 175 I.O. 1007-
 4 H.R. 672-19 Pat.L.T. 774-A.I.R.

—S. 23—Compensation—Basis of.

The mere fact that the High Court was in a particular case given 16 years' purchase to a person claiming compensation under the Land Acquisition Act is not sufficient basis on which as a matter of law and principle, the High Court should give 16 years' purchase in all such cases. The matter depends entirely upon the circumstances of each case. (*Wort and Manohar Lal,*

where there is no prevailing price.

Lands are bought and sold by bargaining. Land acquisition operations are carried on in places where for generations there has not been any sale of land whatsoever. The place is such where no one wants to buy land. In such cases where there is no prevailing price of land nor any standard of comparison, market value must be ascertained by finding out the income which the land was bringing to the owner and then capitalizing it on the principle of reinstatement. (*Mahomed Noor and Chatterjee, J.J.*)
SECRETARY OF STATE v. RAWAT MULL NOPANY.
 A.I.R. 1938 Pat 618.

—S. 23—Methods of valuation—Claimant challenging valuation—Burden of proof.

The methods of valuation of land, under the Land

acquired and possessing similar advantages, and (r) a number of years purchase of the actual or immediate prospective profit from the land acquired. To arrive at a fairly correct valuation, it is necessary to take two or all of these methods. An exact valuation is practically impossible. It is the approximate market value that at most can be sought to be determined. Where a claimant challenges the valuation made by the Special Land

at the probative value of such evidence is very low, for, offers alleged in land acquisition proceedings are scarcely ever bona fide. They can easily be arranged without any loss or inconvenience to either party; so also, although the opinion of experts is evidence in such cases, its value is not great and it would not be possible to place reliance on this kind of evidence unless it is supported by or where such evidence is inconsistent with the best evidence, such divergence or disagreement on material points between the evidence of

there. (*Lake, J.*)
SPECIAL LAND ACQUISITION OFFICER v. ASSUDOMAL.
 A.I.R. 1938 Sind 225.

—S. 23—Premises abutting in common passage with an interest therein—Acquisition of both—Valuation.

Certain premises abutting in a common passage with an interest in the common passage were acquired by the Government. The premises were acquired by the Government at a higher rate than the market value. The passage land was taken into consideration. The passage land was subsequently by the Government. The premises of the premises

LAND ACQUISITION ACT (1894), S. 23.

es and the common passage in respect of the acquisition. A reference was made by the owners under S. 18, Land Acquisition Act. The tribunal made an award in favour of the claimant determining the value of the passage land at one-fourth the rate of the surrounding land.

Held, that by the acquisition of the premises with interest in the common passage, it was not intended that the entire proprietary interest of the owner in the common passage including all the rights in the sub-soil were acquired, and the fact that the adjacent land had received a higher valuation for the existence of the passage as a means of access could not lead to the conclusion that the land covered by the passage had lost its value to the owners.

market value to the owner which may be held to be fair market value in respect of these lands. (*Mahomed Noor and Chatterji, JJ.*) SECRETARY OF STATE v. MULL NOPANY

—S. 23—Valuation—*Express*
—*Written interrogatories*—*Process*
The putting of written interrogatories for submission of written answers is an unusual procedure. (*Costello and Distas, JJ.*) SECRETARY OF STATE FOR INDIA v. BHUPATINATH DEB

—S. 23—Valuation of land—*British method*
Where a plot of land which was approached by what was called a severed street and also by what was referred to as a passage from another street, that common passage, skirting the plot along any but merely debouching on it at one corner.

Held, that the fact that the land lay in the proximity of any such street. (*Costello and Distas, JJ.*) SECRETARY OF STATE FOR INDIA v. BHUPATINATH DEB

—S. 23 (1)—*Market value*—*Evidence*
—*Awards*—*Examination of owners*—*Necessity*
Where in order to enable the determination of the market value of the acquired property, an award accepted by an owner of an adjacent property is pro-

LAND ACQUISITION ACT (1894), S. 31.

daced in evidence, it is not obligatory on the part of the Government to examine such owner with reference to the circumstances under which the award came to be accepted. The Government using an accepted award, may or may not examine the owner or the person interested. (*Guka and Mitter, JJ.*) SECRETARY OF STATE v. NAGENDRA KUMAR BOSE. 42 C W N. 27.

—S. 23, Clause fourthly—*Applicability*—“*Loss of income*”—*Meaning of*.

The loss of income which is contemplated in Clause fourthly of S. 23 is the loss of personal income to the owner of the land. It contemplates a case in which, on account of the acquisition of a certain land, the value of other prop-

erty itself which is being acquired, is a factor to be taken into consideration in the market value of the land itself which

Apportionment

lessor and party in the acquisition into a share between the parties

relatively to this sum ought to be the same as they were with reference to the property. Where a property is

the value of their respective interests. It must follow on this basis that whatever is obtained by one party, the other takes the balance, and this ensures to each payment

In an apportionment, the lessee's interest is not solely the lessee's. (*Costello and Distas, JJ.*) SECRETARY OF STATE FOR INDIA v. BHUPATINATH DEB

W N 1191 = A I B. 1938 Cal. 740.

—S. 31—*Scope*—*Duty of Court*—*Rival claimants*
—*Decision of claims*—*If obligatory*—*Power to refer parties to separate suit*

Where rival claimants come before the Court on a reference under S. 31 of the Land Acquisition Act, the claimants is There is no Court to refer. (*J.*) SWAMI

1938 M W N. 950 = 48 L W. 450 = A I B. 1938 Mad. 955.

LAND ACQUISITION ACT (1894), S. 31.

—Ss. 31 (2) and 32—*Applicability*—*If there be no person competent to alienate the land*—*Meaning of*—*Personal inam grant to family with full rights in it and heritable*—*Absence of condition against alienation*—*Inamdar*—*Interest of*—*If incompetent to alienate*—*Acquisition of inam land*—*Deposit in Government securities*—*If justified*.

The words "if there be no person competent to alienate the land" in S. 31 (2) of the Land Acquisition Act must necessarily apply to a case where there is no present title in the person who has come forward as a claimant to the compensation fixed by the Collector. Ss. 31 and 32 provide for the case of persons who by reason

grantee, the grantee having a heritable estate in full proprietorship, the grant being of the soil and conveying a full interest in the land without restraint of alienation, the inamdar owners of the villages and have an and are entitled to the benefit of it person cannot be said to have no present title within the meaning of S. 31 (2) inamdar does not fall under Ss. 31 and 32 of compensation awarded for acquisition of lands cannot therefore be directed to Government securities and interest inamdar. He is entitled to receive compensation in cash. (*Kangnekar Mahadev Balkrishna v. Dt. Di Poona*, 176 I.C. 642=11 E.B. 44=40 Bom.L.R. 432=A.I.R. 1938 Bom. 325.)

—S. 34—*Agreement that claimant should take away material on land to be acquired*—*If deprives right to interest*.

Under S. 34, the claimant is entitled to interest at 12 per cent. per annum from the time of possession by Government until the sum or compensation is paid or deposited

should relinquish his statutory claim of interest. (*Wors and Manohar Lal, J.*) SECRETARY OF STATE v. SITAL PRASAD. 175 I.C. 1007=11 E.P. 34=4 B.L. 672=19 Pat L.T. 774=A.I.B. 1938 Pat. 266.

—S. 48—*Applicability*—*Jurisdiction of Court under*—*Nature and extent of*—*Proceedings under Act declared invalid by decree in suit*—*Effect of*—*Remedy*.

reason of a decree declaring the proceedings invalid, in such a case the proceedings automatically drop and the

one and the Court has no right to widen it and to act in contravention of the Act (*Puranik, J.*) MUNICIPAL COMMITTEE, NAGPUR v. RAYANLAL. 177 I.C. 958=1938 N.L.J. 54=A.I.R. 1938 Nag. 169.

LAND ACQUISITION ACT (1894), S. 48.

—S. 48—*Construction and Scope*—*Jurisdiction*—*"Withdrawal"*—*Meaning of*—*Reference under S. 18—Sust by owner in Civil Court for declaring proceedings invalid*—*Decree*—*Effect on proceedings*—*Subsequent discharge of Government from proceedings*—*Municipal committee at whose instance proceedings started not appealing*—*Application by owner for Compensation*—*Order awarding*—*If ultra vires*—*Revision*—*Interference*.

R, the owner of a piece of land with a structure, for the acquisition of which proceedings were started under the Land Acquisition Act, contested the proceedings and did not accept the award a reference was consequently

under S. 18 which were stayed pending the suit were revived, and the Collector on behalf of the

Municipal Committee awarded compensation as against the Committee. The latter filed an appeal to the High Court and in the alternative moved in revision.

Held, (1) that with the decree declaring the proceedings invalid (which became final) the reference under S. 18 came to an end and the Court should therefore have dropped the proceedings in the ordinary course, (2) that when the Collector was discharged from the

tion as the order was against the Committee and it was not necessary that the Government should move in the matter; (4) that the necessary consequence of the decision in the civil suit declaring the proceedings invalid was to terminate those proceedings and to make the Court *functus officio*, and the Court therefore had no jurisdiction to entertain any application for R, or to award him damages under S. 48 of the Act, as there was withdrawal by the Government within the

of S. 48, which contemplated only a voluntary withdrawal; (5) that assuming that there was a withdrawal, S. 48, the power to award compensation under S. 48 (2) was conferred on the Collector and not on the Court; and the Court could have no jurisdiction

Collector in the first instance made an award a reference under Part III of the Act; and (6) the order of the Court having been made without the Court having usurped the functions of the Collector, the case was pre-eminently one in which the High Court should interfere in appeal or in revision under s. 115, C. P. Code, and set aside the order. (*Puranik, J.*) MUNICIPAL COMMITTEE, NAGPUR v.

LAND ACQUISITION ACT (1894), S. 49.

RATANAL. 177 I.C. 958=1938 N.L.J. 51=
A.L.R. 1938 Nag. 169.
—S. 49 (1), proviso 2—Order of Collector refusing to make reference—*Reversion*.

The refusal of a collector to make a reference to the Civil Court under the second proviso to S. 49 of the Land Acquisition Act the question whether the land proposed to be acquired did or did not form part of the petitioner's house, is a ministerial act, and the Collector does not thereby constitute himself a Court subordinate to the High Court. His order is, therefore, not subject to revision by the High Court. (*Macneay, J.*) MAUNG NYUN v. THE COLLECTOR OF MANDALAY.

1938 Rang L.R. 623.

—Ss 50 and 54—Right of appeal—Acquisition at the instance of Municipal Committee—Proceedings on reference—Government discharged—Subsequent order of compensation under S. 11 against Municipal Committee—Appeal by latter—If incompetent. *See* LAND ACQUISITION ACT, S. 43. 1938 N.L.J. 1

LAND CUSTOMS ACT (XIX OF 1921),
Sub-Inspector of Customs—Complaint by—*C*—
—Notification under S. 3 (1)—Effect of.

Under S. 7 (2) of the Land Customs Act, a Land Customs Officer is competent to make a complaint to a Magistrate. In view of the Notification of the Governor-General in Council under S. 3 (1) of the Act, appointing all Sub-Inspectors of Customs to be Land Customs Officers, a Sub-Inspector of Customs is competent to prefer a complaint under S. 7 (2), because he is a Land Customs Officer. (*Burn, J.*) PUBLIC PROSECUTOR v. KRISHNAMURTHI AYYAR. 177 I.C. 335=

III Cr.L.J. 867=1938 M.W.N. 511=11 B.M. 31

47 L.W. 576=A.L.R. 1938 Mad 7

(1938) 1 M.L.J.

those for whose benefit the loan was granted. There is

Wajib ul arz—Construction—Principles.

On a construction of the *wajib-ul-arz* in question it was held that the *ryots* who had constructed at his own expense a house, had only two rights (1) a right to sell the materials, and (2) a right to make a gift of the right of occupation. It was further held that these two were separate rights which were not combined to produce a third right of sale of the right. Where a *wajib ul arz* has to be read according to custom, it is not permissible to put a inferential construction. The terms of

—Abadi—House occupied by tenant—Appurtenance to tenancy—Presumption—Right of ejected tenant to compensation for house and adjacent trees

Where a tenant is found occupying a house in the

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abadi of an agricultural village, there is a presumption that he holds the house appurtenant to his tenancy and he has no right to retain it against the wishes of the landlord on ceasing to be a tenant in the village. Where, therefore, a tenant has been ejected from his holding, the burden of proof is on him to show that in spite of his ejection he has a right to remain in occupation of the house. The fact that the landlord gave his consent to the erection of the house does not stop him from ejecting the tenant without giving him compensation for the value of the house. Nor is the tenant entitled to any compensation for trees of spontaneous growth adjacent to his house when he is ejected from his house. (*Hamilton, J.*) BANARSI DAS v. KALKA.

1938 E.D. 256=1938 A.W.R. (O.C.) 20=

1938 O.A. 482=1938 U.W.N. 171.

—Abadi—Tenant in possession of land in front of his house as *Sakan darwaza*—Effect of long enjoyment

being enjoyed as such. The landlord is to be deemed in proprietary possession of such land and he is not entitled to eject the tenant by taking actual possession though the tenant has no right to put up any structure thereon without the express permission of the landlord. If the tenant puts up a verandah on such land without the landlord's consent the landlord can obtain a decree for its demolition but not a decree for actual possession of the land. If, however, the land can be of no practical

(I) HANUMAN PERSHAD v.

1938 O.A. 428=

(O.C.) 31=1938 E.D. 335=

1938 U.W.N. 285.

dar in the village (*Deo ul-Hasan, J.*) BANARSI DAS v. VIDYA SAGAR ABRAR. 177 I.C. 969=

1938 O.A. 793=1938 M.L.R. 461=

1938 O.W.N. 1039=A.L.R. 1938 Oudh 251

—Acceptance of rent from sub-tenant by zamindar

DEO. 1938 A.L.J. (Supp.) 61= 1938 A.W.R. (B.R.) 262=1938 R.D. 604.

—Admission to tenancy—Admission by zamindar after transfer of zamindari rights—If can be recognised.

The admission of a person to the tenancy of a holding by a zamindar after he had transferred his zamindari rights to another, cannot be recognised. (*Darling, S. M. and Bamford, J.M.*) KISHAN PRASAD v. KARTARA. 1937 E.D. 426.

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occupancy tenants. The genuine tenants in chief are the so-called sub-tenants. (*Darling, S.M. and Mehta, J.M.*) SWARATH SINGH v. MAKUND DAS. 1938 B.D. 827.

—Occupancy tenant—Absolute occupancy tenancy—Nature and incidents.

Absolute occupancy tenancy is a special kind, heritable and assignable. It springs out of settlement and statute. It does not amount to proprietorship. In such a case there is either a reverter or the Crown takes by escheat. (*Stout, C.J. and Clarke, J.*) DARYAO SINGH v. KUKDAY. 1938 N.L.J. 366.

—Permanent tenancy—Inference of—Origin unknown—Land occupied by same tenant for over 100 years—Erection of thatched buildings with mud walls—If permanent.

Where it is found that the origin of a tenancy is unknown, that the family of the tenant land for at least 100 years, that the land for residential purposes, that no rent be that the land has been occupied by a lot of twelve rooms and three court yards, made of mud and the roofs thatched,

whether the buildings are made of mud or bricks depends very largely upon the financial position of the person occupying the land. The question of the nature of a tenancy being a mixed question of fact and law, the inference to be drawn from the nature of tenancy becomes a question of law which can be gone into in second appeal. (*Worl, J.*) SHAIKH DARGAHAN v. HAFIZ MOHAMMAD. 176 I.C. 562 = 4 B.R. 758 = 11 B.P. 93 = 19 Pat.L.T.

—Permanent tenancy—Origin of tenancy unknown

A landlord brought a suit for possession of a homestead land. It was tenancy was unknown and repeated transfers of the tenancy to the knowledge of the landlord. The tenant had erected substantial structures to the knowledge of the landlord or his predecessor. The rent was paid uniformly until the commencement of the current year when it was changed slightly.

Held, that a presumption created by a presumed lost of the circumstances and the ejected. (*Kiveland, J.*) MADHUSUDHAN SWAIN v. DURGA PRASAD. 173 I.C. 259 = 4 B.R. 231 = 10 P.B. 396 = A.I.R. 1938 Pat. 7.

—Permanent tenancy—Registered lease by building purposes—Term not mentioned—Lessee having no rights in trees and not to alienate or encumber without consent of lessor—Presumption as to duration of lease. See T. P. ACT, S. 106. 1938 M.W.N. 1236.

—Permanent tenancy—Tenancy held at low rate for considerable number of years—Presumption.

has been held at a low rate for a considerable number of years, though the value of the land and with it the letting value thereof has increased to a great extent—that is an element which, with other facts, leads to an inference of fixity of rent and of permanency. (*Gale and Miller, J.J.*) PRUDYOT KUMAR v. RAHIMAKISHEN. 420 W.N. 304.

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—Person holding bila tasfa—If can acquire grove rights.

No grove rights can accrue to one who is holding bila tasfa. (*Darling, S.M. and Bemsford, J. M.*) BILASI SINGH v. RAM CHANDER SINGH. 1937 B.D. 462.

—Relationship—Person in possession accepted by receiver as tenant and paying rent to receiver for several years—Effect. See BIHAR TENANCY ACT—OCCUPANCY RAIYAT. IN Pat.L.T. 570.

—Rent—Charge for—Lessee undertaking to cultivate land, reap the crop and deliver amount of rent in kind to lessor—If covenant to pay out of crops raised on leased land—Charge for rent—If created.

An undertaking by a lessee in the lease executed by him in favour of his lessor to cultivate the demised land, reap the crop and deliver to his lessor the

of the land (Leach, CARUPPA.

1938 M.W.N. 917 = 178 I.C. 508 = A.I.R. 1938 Mad. 940 = (1938) 2 M.L.J. 565.

—Rent—Decree for—Execution sale—Reversal—Restitution—Mesne profits awarded to tenant—If can include rent payable by tenant to landlord.

Where mesne profits are awarded to a tenant against his landlord in proceedings for restitution consequent on the reversal of an execution sale, the tenant should pay

1938 P.W.N. 511 = A.I.R. 1938 Pat. 573.

—Rent—Dispute as to—Registered agreement and remission slip—Preference.

Where the zamindar claimed an enhanced rent based

and Bomsford, J.M.) HADRI D. MARIAN LEBI. 1938 A.L.J. (Suppl.) 32 = 1938 B.D. 405(1) = 1938 A.W.R. (B.R.) 170.

—Rent—Enhancement—Ejectment suit against non occupancy tenant under Agra Tenancy Act of 1901

—Compromise—Tenant agreeing to pay enhanced rent in return for promise of occupancy rights—Effect of—Enhanced rent—If legally recoverable after Act of 1926.

In a suit for ejectment of a non occupancy tenant paying a rent of Rs. 6, a compromise was effected under

promise was acted upon by both the parties. In a subsequent suit after Act III of 1926, by the plaintiff for rent at Rs. 12 the defendant pleaded that if a legal rent was only Rs. 6.

Held, that the compromise having been acted upon there being nothing in the Act of 1901 to prevent the landlord and tenant from contracting in the manner

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they did, the rent legally payable after the compromise was Rs. 12, which became the rent payable. (*Darling, S.M. and Bonford, J.M.*) MAHOMED MUSTAFA ANSARI v. RAM SARUP AHIR. 1938 B.D. 202 (2).
1938 A.W.R. (B.R.) 59.
—Rent—Enhancement—Inamdar—Limit to enhancement of rent of tenants.

ed beyond three times the assessment. Such a rule is a rule of thumb appropriate only in the case of permanent tenancies where land is held on payment of assessment only or on a rent only slightly in excess of it. (*Bramhall and Son, J.J.*) KRISHNA BHIMA v. LAAMIDAI. I.L.R. (1938) Bom. 465—178 I.O. 398—11 B.R. 56—48 Bom.L.R. 439—A.I.R. 1938 Bom. 316.

—Rent—Enhancement of—Suit for—Compromise decree fixing rent—Effect of—Right of tenant to claim remission.

Where a suit for enhancement of rent is not fought out, but the parties agree that the rent should be fixed at a certain figure that constitutes a fresh agreement between the parties landing on them, the tenant would not therefore be entitled to claim any remission. (*Darling, S.M. and Bonford, J.M.*) ADITYA PRASAD v. MATHURA. 1938 B.D. 111—1938 A.W.R. 56 (B.R.)

—Rent—Liability for—Land included in area allotted to plaintiff on partition—Liability of intermediate tenant

—Producers to create such an intermediate tenancy. (*Jack, J.*) NIBARAN CHANDRA BANERJEE v. MOMINADDIN HOWLADAR. 66 C.L.J. 534—A.I.R. 1938 Cal 374.

173 I.O. 222—10 B.R. 189—A.I.R. 1938 Sind 16

—Rent—Suit for arrears of produce rent—Burden of proof.

In a suit for arrears of produce rent, the burden of proof

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1938 P.W.N. 36—4 B.R. 324—173 I.O. 724—19 Pat.L.T. 4—10 B.P. 437—A.I.R. 1938 Pat 81 (S.B.).

—Rent—Suit for—Land in suit allotted to plaintiff's share by partition—Question if it appertains to Mahal paying rent—If can be raised in defence in rent suit—Bengal Estates Partition Act.

by way of defence in the rent suit. It should have been decided in the partition proceedings. (*Jack, J.*) KOKARAN BAIKAGI v. KUMAR BIMALENDU ROY. 66 C.L.J. 578.

—Rent—Suit for—Maintainability—Lessee leaving premises before expiry of term.

A person contracted to take certain premises on lease for a period of three years and subsequently extended it to a period during which he would remain in the town. After remaining in possession of the premises for a long period he left the premises without any sufficient reason before the expiry of the term in spite of the warning given by the landlord that he would be liable for rent so long as he would remain in the town. The landlord thereupon took possession of the premises and brought a suit for recovery of rent for a part of the unexpired period of lease.

Held, that a suit for rent could lie for the unexpired period of lease. (*Tek Chand, Offg. C.J.*) H. G. LUSH v. RAM CHAND MANCHANDA. 40 P.L.R. 750—A.I.R. 1938 Lah 454.

—Rent—Suit for in respect of part of holding—See BIHAR R. 1938 Pat 305.
Interest prior to suit

a mere claim for damages or in such a suit is not act. (*James, J.*)

1938 P.W.N. 689—A.I.R. 1938 Pat. 578.

—Rent—Suspension—Application of doctrine—Tenant not put in possession of part of demised land—

Held, that in the circumstances of the case, justice, equity and good conscience required that there should be no total suspension of rent but that there should be an equitable abatement of rent on account of the area of which the tenant was not in possession. (*M. C. Ghose v. J.H. ROY v. J.W.N. 1030*)

landlord, the ed to suspen-

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sion of rent is to be determined with reference

the land should be recorded as *khudkhasi* in one *fashi* and personally cultivated in the next. If in the fields no sub tenants are shown in those two *fashis* it should be regarded as having been cultivated in *khudkhasi* in those two years. (*Darling, S.M.*)
GAYA SINGH v. BHAGWAN DAS S

—Sir land—Alienation by a co-tenant—Determining factor.

Ordinarily when *sir* is joint *sir* of several co-sharers and one of them alienates his share claim ex proprietary rights, then applies for the demarcation of his of rent on it, the *sir* continues to proprietary body. If a demarcation is portion becomes *khalsa* land in which the of the soil, instead of being mere non occu in *sir* land, become full tenants in chief capable of acquiring either occupancy rights therein after holding for 12 years under the Act of 19 under the Tenancy Act of 1926. not liable to ejectment from (*Darling, S.M. and Mehta, J.M.*)
v. DHARAN DEO SINGH. 1938 B.D. 822.

—Sir land—Co-sharer mortgaging specific plots of *sir* and also surrendering possession—Rights of mortgagee.

Where a co-sharer transfers by way of specific plots of *sir* and also surrenders possession the mortgagee, the possession of the mortgagee, *khudkhasi murtakin* and it should be so entered in the papers, if the other co-sharers do not object. (*Darling, S.M. and Bomford, J.M.*) DHANUKDHARI KEWAT v. SANDAGAR SINGH. 1938 A.W.B. (B.B.) 301 = 1938 B.D. 422.

—Sir land—Ejectment of tenant—All co-sharers, if should join.

Sir is a purely personal holding, the rights in which can only be exercised by all the co-sharers. But in a suit for ejectment by only one of the co-sharers where the other appears in the witness box and states that he has no objection to the suit, it should be taken that for

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Page in representative capacity—*co-sharer*,

that if a part of joint *sir* is divided and divided off, the whole *sir* still retains its character, as *sir* among the remaining co-sharers. But where the joint *sir* holders are a person and his brother's widow, and a mortgage by the brother is found to be in his representative capacity it must be

1938 B.D. 448 = 1938 A.W.B. (B.B.) 312 = 1938 A.L.J. (Suppl.) 108.

liton—Suit to eject

an.

sir of other Zamindari was not recorded as the *sir* to join in a suit and *Darling, S.M.*)

1938 A.L.J. (Suppl.) 62 = 1938 B.D. 598 = A.W.B. (B.B.) 338.

Subsequent sale—original subtenant

Where a *Sir* plot is at first mortgaged and subsequently sold to pay off that mortgage, and the vendee leases it, such a lease is invalid as on the mortgage of

—Sir land—Planting of grove—Effect. The mere fact that a grove has been planted in *sir* land will not affect the *Sir* character of the plot. (*Bomford, J.M. and Darling, S.M.*) RAM CHANDRA v. GOPAL LALJI. 1938 A.L.J. (Suppl.) 58 = 1938 B.D. 371 = 1938 A.W.B. (B.B.) 203.

—Tenancy at will—Nature of—If heritable.

A tenancy at will amounts to no estate at all and terminates by the death of either party. It is not heritable. (*Stone, C. J. and Bose, J.*) ABDUL RAZAK v. SETH NANDLAL. 1938 N.L.J. 317 = A.T.R. 1938 Nov 608.

temporary
1317 *Fashi*
P on cere-
services on
P brought
D alleged
he land and

the construction was estopped from claiming possession of the land. The lower Court found that the structures were not substantial and no special circumstances were proved by D.

Held, that D had not acquired any right to prevent P from recovering possession of the land. The mere fact

status of tenant.

It is both alike doubtful whether a co-*sir* holder can mortgage a share of *sir* and whether such a mortgagee can obtain possession on the basis of such mortgage. But if the mortgagee does get possession the tenant in *sir* becomes a tenant in *khalsa* and he can acquire occu-

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that there was no written lease although the land was taken as recently as 1317 did not affect the question. (*Dhule, J*) **MT. BATULAN v. SAYID MOHAMMAD NAKEM** 175 I.C. 463-19 Pat L.T. 553-4 B.R. 623-11 R.P. 8-A.I.R. 1938 Pat. 236

—*Thickadar—Decree against for arrears of rent—Execution—Thicca interest—Saleability of*

In the absence of evidence to show that the judgment debtor has come to an end with the thickadar-judgment-debtor has an interest which is *prima facie* saleable in execution of a decree against him for arrears of rent in respect of the *thicca* tenure. (*Dhule, J*) **SUKRA URAD v. MANJHI LAL BISWA**

jag has been transferred in different portions to different persons. In such a case, in order to defeat the claim of the plaintiff-landlord it is necessary for the tenant-defendant to prove a custom not merely of transferring

Manohar Lal, J) **NARENDRA NATH PATRA v. BHAGABAT CHANDRA MALLIK.**

176 I.C. 75-4 B.R. 676-11 R.P. 50-1938 P.W.N. 506-A.I.R. 1938 Pat. 467.

—*Transferable tenancy—Onus—Lease created before Transfer of Property Act and not governed by Bihar Tenancy Act—If transferable—Erection of permanent buildings—Effect—Estoppel.*

A tenancy not governed by the Bihar Tenancy Act, and coming into existence before the Transfer of Property Act (not being governed by the Bihar Tenancy Act) is not to be held to be transferable by the landlord. There is no distinction in this respect between a lease for homestead and a lease for residential purposes. Under the general law one of the incidents of a tenancy, whether permanent or otherwise, in India prior to the

construction of settlement decree.

Where the *waqf ul ars* contained a reference to the decree of a Settlement Court that decree be given without rent in perpetuity in favour of the decree-holder and his heirs, the decree by itself is not one for under-

LAND TENURE.

proprietary rights. In subsequent settlement it was recorded as under-proprietary with reference to the decree. The mere failure to correct the settlement records, in view of the reference in the *waqf ul ars* to the decree unaccompanied by any assertion of under-pro-

—*Underproprietary rights—Settlement Court decree creating underproprietary rights jointly—Subsequent division of Kewal into separate Khatar—If affects joint liability of co-sharers for rent.*

Where when underproprietary rights were created in

BISHUNATH SINGH. 172 I.O. 918-1938 O.L.E. 60-1938 O.A. 68-1938 R.D. 221-1938 O.W.N. 59-1938 A.W.R. (C.O.) 13-19 R.O. 209-A.I.R. 1938 Oudh 83.

Position of—Right of

ing house sites in cities that they have a right to inhabit agricultural areas, to eject a transferee of ownership but also which prohibit the

KEY LAL v. VIDYA

1938 O.A. 793-

1938 O.L.E. 461-1938 O.W.N. 1038-A.I.R. 1938 Oudh 251

LAND TENURE—Chowkidari jagir—Nature of—Resemblance to Zamindar—Non performance of private services to Zamindar—If justifies resumption. See GRANT—CHOWKIDARI JAGIR. 17 Pat. 315.

—*Gairmazra am—Incidents of—Right of Zamindar to sell's—Tenancy rights—If acquired by person taking settlement.*

ation of

is not

who has

settles it

with any one, the person taking such settlement cannot and does not acquire any tenancy right by virtue of such settlement. (*Agarwala and Madan, JJ*) **AMIRUDDIN**

Chowkidari Jagir

appoint any one whom they like. The position of the Ghatwal is not like a mere jagirdar who has "a jag" assigned for support and remuneration". In a where there is an express repudiation by the family to accept relation of Ghatwal or where

LAND TENURE.

power thinks that the incumbe removed has left no heir who rendering even the vicarious services of the obligations of the holder of such cases ruling power will be justify these circumstances are themselves feature in the persons of the entire

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Under the *karayadu* system of land tenure the lands are temporarily cultivated in separate shares by the co-shares villagers and are subject to periodic redistribution. The right of the whole community extends to the whole land and the right of each member is similar to the right of every other. No ryot, however, is in occupation of more than a fractional share of the whole land. (*Venkatashubba Rao and Abdul Rahman, Jf.*) **RATNASWAMI NADAR v. PRINCE OF ARCOT'S ENDOWMENTS, TRICHINOPOLY.** 48 L.W. 109=1938 L.W.N. 740=A.I.R. 1938 Mad. 755=

no longer performs the duties of the tenure does not alter the nature of the tenure, and a member who has separated from the holder is not a member of the joint family and cannot claim any interest in the tenure or to succeed to it on the death of the holder for the time being. (*Wort, J.*) **NARAIN SINGH v. BAIKUNTH SINGH.** 174 I.O. 168=4 B.R. 388=19 Pat L.T. 246=10 R.P. 486=1938 P.W.N. 558=A.I.R. 1938 Pat. 375.

continu

Separate books—Tenant spending money on improvements—Effect of.

It cannot be said that *Khata Kul* tenants are permanent tenants. They are no doubt privileged tenants but the privilege does not extend to permanency of the fact that a *Khata* is opened in the name of tenants in the landlord's books is by no means conclusive of the fact that they are permanent tenants. Nor can the fact that the land has remained continuously in the same family and descended from father to son for several generations be made the foundation of a right to hold the land permanently. Further the spending of money by the tenants on developing and improving the land would not be a good ground for holding that the tenancy is permanent in law, though it may give rise to a claim for compensation on eviction. (*Broomfield and Macklin, Jf.*) **BABASAHEB APPASAHEB v. LAXMAN, APPA RAMAPPA.** 40 Bom L.R. 1015=A.I.R. 1938 Bom 492.

—*Mookhasa and Vrittee Tenure—Incidents—See LANDLORD AND TENANT.* A.I.R. 1938 Nag. 269.

—*Patnidar—Duty to protect superior interest from revenue sale.*

There is no duty cast upon the patnidar qua patnidar, to intervene for the protection of the superior interest and prevent its sale for arrears of revenue. The fact

occupies something in the nature of an office rather than the mere enjoyment of property. If that is not shown and the tenure is created by a patta, the presumption is

shown as a *thika doomi* tenure. There was a remark that the rent was not permanently fixed, but there was nothing to suggest that the tenure holder enjoyed any right other than that conferred upon him by his patta. He did not produce the patta.

Held, that the effect of the entry in the record-of-rights would be to warrant the presumption that the tenure was a permanent one but held at a rent liable to enhancement and that the tenure-holder was entitled to transfer it by sale or mortgage. (*Courtnay Terrell, C.J., James, J.*) **SONAR RAM v. BUDHU RAM.** 175 I.C. 492=1938 P.W.N. 457=4 B.R. 586=10 R.P. 630=19 P.L.T. 421=A.I.R. 1938 Pat. 431.

LEASE.

Agricultural lease.
Assignment by lessee.
Construction.
Covenant for renewal.
Forfeiture.
Notice to quit.
Power to grant.
Registration.
Renewal clause.
Residential lease.
Rights of lessee.
Right to minerals.
Transferability.
Validity.

—*Agricultural lease—Portion of leased land planted with the shrubs—Tenant at liberty to utilise rest for any purpose—Nature of lease.*

A good portion of land which was subject-matter of a lease had already been planted with tea shrubs and on a portion thereof was a factory for manufacturing tea. There was a covenant in the lease that the tenant was not to break up or convert any part of the land which was under tea cultivation for any other purpose but that

—*Saranjam Nature and incidents of—Saranjamdar—Power to create saranjam in favour of stranger out of own property.*

A *saranjam*, or *jahgir* is a political tenure created from or dependant on political considerations, the existence of which can only be determined by Government. It is not open to a *saranjamdar* to create a *saranjam* out of his own property in favour of a stranger, though he can make a grant of an *inam*.

Quære.—Whether an alienation by a *saranjamdar* of the whole or any part of his *saranjam* beyond his lifetime is void and illegal. (*Ranganekar and Sen, Jf.*) **RANCHANDRA v. LAKSHMIBAI.** 176 I.C. 586=11 R.B. 36=40 Bom L.R. 400=A.I.R. 1938 Bom. 331.

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A.I.R. 1938 Cal. 539

—Assignment by lessee—Decree for rent against assignee remaining unsatisfied—Subsequent suit for rent against original lessee—If barred—Joint debtors—Decree against one—When bar to suit against others—C. P. Code, S. 11.

the debt being merged in remaining cause of action debtors. On the other hand, than one debtor is either joint only, a judgment against one claim against the others, because in such a case the cause of action against each debtor is distinct, and the debt being merged in remaining cause of action against one debtor is

LEASE.

177 I.C. 777-11 E.C. 275-67 @ L.J. 421= 42 C.W.N. 832-A.I.R. 1938 Cal. 478.

Construction—Charge if created for rent.

Where a lease merely contained a general stipulation that if the rent is not paid the owner shall be entitled to recover it from the property of the lessee, it was held that under the terms of the lease the landlord was not a

could not claim priority over a
Bijai Singh Ji v. Ballabh
1938 A.M.L.J. 100.

Charge for rent—When created—
reap the crop
covenant to
in crops See

1938 A.M.L.J. 565.

Construction—Lease for discharging prior debt by adjustment—No rent fixed—Nature of transac-

NARAIN.

1938 A.L.J. (supp.) 24= 1938 A.W.R. (B.E.) 151= 1938 B.D. 300

the lessee is not a mere guarantor for the assignee. A judgment for rent obtained by the lessor against the assignee, which remains unsatisfied, cannot operate as a bar to a subsequent claim against the original lessee on the covenant. (Ridmont, C. J. and Wadia, J.) MUNICIPAL CORPORATION OF THE CITY OF BOMBAY v. VASANTLAL FULCHAND I.L.R. (1938) Bom 471

177 I.C. 478-11 B.E. 91-40 Bom.L.R. 497

A.I.R. 1938 Bom. 36

—Assignment by lessee by way of English mortgage—Validity—Liability of mortgagee for rent lessor. See T. P. ACT (AS AMENDED IN 1929), S. 20 (2) 17 Pat. 499.

—Assignment—Restrains by condition or covenant—Effect of—Lessee's power to assign subject to condi-

end to it as soon as the assignment comes to his knowledge if the lease contains a power of re-entry. I grantor can by a stipulation withhold from the grantee the power to assign absolutely, it follows that he can make the power to assign subject to conditions and can stipulate that any purported assignment which does not

Construction—Mere agricultural lease or *theka*—Deed giving right to rents and profits and full rights of transfer—Rights made heritable—Immunity from ejectment under any circumstances—Nature of right conferred—Lessee—If *thekadar*—Rights—Saleability in execution See AGRA TENANCY ACT, S. 203 1937 A.W.R. 1043=1937 A.L.J. 1166.

public demand which shall from time to time be charged, assessed, or imposed upon the said mines or any part thereof by the authority of Government of India or Local Government or otherwise and on the lessors paying

was, that the cess is levied on immovable property and that immovable property is liable to pay it and as such the lessor. (2) that

ment his transfer shall not be valid.

the mining lease. Even express words referring to public

LEASE

demands imposed upon the proprietors in respect of the mine would not have brought income tax within the covenant; (4) that the words "taxes, rates, assessments and impositions whatsoever" are followed by the words "charged, assessed or imposed upon the said mines" a variety of phrase which is intended to avoid restricting the covenant to cases in which the demand is in the strictest sense 'charged' upon the land. The phrases are

LEASE.

the tenant from claiming any reduction without a corresponding stipulation by the landlord giving up his right to claim enhancement, the rent of the tenancy is not fixed in perpetuity. The fact that the words "generation to generation" are in the lease is by itself of no significance, inasmuch as the rent of a heritable tenancy may not be fixed in perpetuity. (*Bariley and Nasim Ali, I.*) **BAHADUR SINGH SINGH v. JY.**

67 C.L.J. 512 =
A.I.R. 1938 Cal. 793.
Terms of amount to cultivating

be tenancy are that the tenant is
ce and a fixed sum which varied
year but which is entered in

48 L.W. 533 = 1938 A.L.R. 683 =
4 B.E. 811 = A.I.R. 1938 P.C. 243 =
(1938) 11 M.L.J. 410 (P.O.).

Construction—Putni Patta—Additional rent for future accreted lands—Liability of putnidar—Covenant running with land—"Sikhasti" and "payasthi"—Meaning of.

A putni patta contained the following clauses: "Profits and losses in consequences of drought or inundation, alluvion (payasthi), diluvion (sikhasti) etc., shall be yours never on any account whatsoever shall you or your heirs or representatives be competent to claim any reduction of rent, however little, and we or our heirs and representatives shall not, on any account, be entitled to demand any additional rent over and above the fixed rent; if we or you do so it will be rejected."

Held, (1) that the words "sikhasti" and "payasthi" mean disjunction and junction of land by encroachment or recess of a river, that is to say diluvion and alluvion, that the word "payasthi" was used to cover all alluvial

amount to a certain amount, the terms of cultivation amount to a lease and not to cultivating partnership. (*Grille, J.*) **GOVINDRAO BALWANTRAO v. RUMA ATNARAM.** 177 L.O. 931 = A.I.R. 1938 Nag. 314.

Construction for renewal—Construction—Terms of renewal not stated—One renewal or perpetual renewal—If intended.

Where in a lease there is a covenant for renewal, if the option does not state the terms of renewal, the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof, except as to the covenant for the renewal itself. The leaning of Courts is always against perpetual renewals. In order to establish this construction the intention has to be unequivocally expressed. Otherwise the lessee is entitled to only one renewal for the same period as the original lease. (*Syed Nasim Ali, J.*) **SRIISH CHANDRA NANDI v. DOA MAHAMNAD BYAPARI.** 68 C.L.J. 128.

Forfeiture—Covenant against assignment—Breach—What amounts to—Condition against assignment—Under-letting agreement of tenant constitutes breach of covenant

of the covenantees and covenantors were them. (*Syed Nasim Ali and Henderson, J.*) **PORE ZEMINDARY, LTD. v. CHANDRA SINI HORIA.** 68 C.L.J. 305.

Construction—Renewal clause—Perpetual right to renew.

If the option in a lease does not state the terms of renewal, the new lease will be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof, except as to the covenant for renewal. Where however the terms of the lease made it clear that the tenants were to continue after the expiry of the term until there was a re assessment at the

renewal of the tenant landlord

years granted by lined a covenant against that neither the lessee nor under the lessee should assign the lease or transfer any right or interest thereunder, or under-let the whole or any portion of the premises comprised in such lease without the assent of the Board of Revenue of Bihar and Orissa first being obtained, and that the penalty for infraction of this covenant should be forfeiture of the lease. In January 1933, the lessee, which was a company went into liquidation and on 30-9-1933, the lessee-company through its liquidators contracted with one B for sale of the leasehold rights under the lease subject to the sanction of the Board of Revenue; if sanction was not obtained the agreement was to stand cancelled B was, however, in the meantime to act as agent of the lessee in respect of the leasehold rights in the quarries, to pay to the lessee the royalties and any other sums payable by it to Government and to

LEASE.

Held, (1) that there was no sub letting by the lessee-company to B, there being nothing in the agreement pointing to a relationship of landlord and tenant, between the company and B, (2) that the effect of the agreement was to give B an agency coupled with an interest—and it was not unusual to have an agency coupled with interest—though B was not to be the lessee's agent in

forfeiture of the lease. (*Sir George Larned*) SECRETARY OF CO. LTD

1938 P.W.

1938 O.W.

III E.P.C.

65 L.A. 45-17 Pat 69-172 I.C. 443-47 L.W. 3-
IN Pat L.T. 1001-A.I.B. 1938 P.O. 20-
(1938) 1 M.L.J. 209 (P.C.).

—*Lease for propagating lac*—Subsequent lease in respect of same area to another for bringing jungle under cultivation—Leases, if consistent.

It is open to a Zamindar to give a lease for propagating lac and subsequently to give a lease in respect of the same area to another for bringing jungle under cultivation. There is nothing inconsistent in the two

NOTICE TO QUIT.

—*Power to grant*—Donee in possession—Lease during pendency of suit to set aside gift on breach of a covenant—Suit though dismissed by trial Court, ultra a trespasser, set aside a covenant the gifted in the trial appeal, it is

suit by the trial Court could not bind the possession of the donee over the gifted property lawful. The appellate decree relates back to the date of the cause of action with respect to which the suit is brought. As the donee was not in lawful possession, he was not compe-

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NATHU RAM v. SALIG RAM.

1938 B.D. 251=

1938 A.W.B. (B.R.) 87.

—*Registration—Validity—Addendum signed only by lessee—Registration if proper.*

A registered lease, the terms of which regarding area, could be ascertained with certainty, did not name actually the villages affected. A list of those villages

lessor from contesting its accuracy. (*Stone, C.J. and J.*) MULJI SICKKA & CO v. NURMOHAM.

A.I.B. 1938 Nag. 377.

—*new clause—Renewal dependent on fresh*

—*Duty of landlord*

the execution of a fresh kabaliat by the tenant

ent upon a fresh assessment, it is for the landlord the fresh assessment and then call upon the

tenant to exercise his option. In such a case the landlord before he can treat the lease as determined is bound to give notice to the existing tenant for exercising an option of renewal. (*S. K. Ghose and Edgley, J.J.*)

PRODYOT COOMAR TAGORE v. MAYNUDDIN MIA.

III C.L.J. 435=A.I.B. 1938 Cal. 724.

—*Residential lease—Lease mentioning residence as its object—Land described as 'bagat'—Landlord using in litigation words appropriate to agricultural tenancy—Nature of lease.*

is "one for residential purposes. (*Mukherjee, J.*) UDOYTAR SAHA v. HABIBAR RAHAMAN.

42 C.W.N. 771.

—*Rights of lessee—Area of leasehold less than that stated in lease-deed—Selami and royalty—If liable to be reduced.*

Where no measurement took place at the time of the creation of the lease and the area which is mentioned in the schedule annexed to the lease-deed was taken for granted, and the lease-deed does not contain any provi-

(*S.K. Ghose and Patterson, J.J.*) KESHABJI LALJI v. PIRAMALL GAYENKA. 67 O.L.J. 521=42 C.W.N. 406.

—*Right to minerals—Grant of patni lease—Absence of covenant relating to working of minerals—*

LEASE

demands imposed upon the proprietors in respect of the mine would not have brought income tax within the covenant; (4) that the words "taxes, rates, assessments and impositions whatsoever" are followed by the words "charged, assessed or imposed upon the said mines," a variety of phrase which is intended to avoid restricting the covenant to cases in which the demand is in the strictest sense 'charged upon the land'. The phrases are to be taken in their ordinary and natural meaning; (5) that the words "upon the said mines or any part thereof," did not refer to the interest of the lessees as distinct from that of the lessors. (*Sir George Rankin*.)
 BENGAL COAL COMPANY LTD. v. JANARDHAN KISHORE LAL,
 12 O.W.N. 1098-176 I.O. 433-
 1938 M.W.N. 1261-1938 O.L.R. 317-
 68 O.L.J. 50-1938 O.W.N. 906-11 R.P.C. 60-
 48 L.W. 533-1938 A.L.R. 693-
 4 B.R. 811-A.I.R. 1938 P.C. 243-
 (1938) 1 M.L.J. 410 (P.C.).

—Construction—Putni Patta—Additional rent for future accreted lands—Liability of putnidar—Covenant running with land—"Sikhasi" and "pajasthi"—Merging of.

your heirs or representatives be competent to claim any reduction of rent, however little, and we or our heirs and

fixed
 "pajasthi"
 or recess of a river, that is to say diluvion and alluvion, that the word "pajasthi" was used to cover all alluvial lands whether reformation *in situ* or accretion and included future accretions also, and that, therefore, the putnidar was not liable to pay any additional rent for future accreted lands, the rent reserved for the leasehold as well as therefore, ran with the of the covenantees and covenantors were them. (*Syed Nasim Ali and Henderson, J.J.*)
 FORE ZEMINDARY, LTD. v. CHANDRA SINGH HORIA.

—Construction—Renewal clause—Power to renew.

the lease subject to the tenant consenting to assessment within a year and where only if the did not consent to such re assessment that the would have right of re entry and not otherwise.

Held, that the true meaning of the renewal clause in the kabuliat was not that the tenants were not entitled to one such renewal, but that they were entitled to such a renewal clause in all succeeding leases as a substantive

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the tenant from claiming any reduction without a corresponding stipulation by the landlord giving up his right to claim enhancement, the rent of the tenancy is not fixed in perpetuity. The fact that the words "generation to generation" are in the lease is by itself of no significance, inasmuch as the rent of a heritable tenancy may not be fixed in perpetuity. (*Bartley and Nasim Ali, J.J.*)
 BAHADUR SINGH SINGHEE v. BHUPAL CHANDRA ROY.
 67 O.L.J. 512-
 A.I.R. 1938 Cal. 793.

—Construction—Terms of amount to cultivating partnership.

Where the terms of the tenancy are that the tenant is to pay half the produce and a fixed sum which varied apparently from year to year but which is entered in jamabandis as certain amount, the terms of cultivation amount to a lease and not to cultivating partnership. (*Grille, J.*)
 GOVINDRAO BALWANTRAO v. RUMA ATMARAM.
 177 I.O. 931-A.I.R. 1938 Nag. 314.

—Covenant for renewal—Construction—Terms of renewal not stated—One renewal, or perpetual renewal—If intended.

Where in a lease there is a covenant for renewal, it state the terms of renewal, the new he same period and on the same lease in respect of all the essential

except as to the covenant for the renewal itself. The leaning of Courts is always against perpetual renewals. In order to establish this construction the intention has to be unequivocally expressed. Otherwise the lessee is entitled to only one renewal for the same period as the original lease. (*Syed Nasim Ali, J.*)
 SRISH CHANDRA NANDI v. DOA MAHAMAD BYAPARI.
 68 O.L.J. 129.

—Forfeiture—Covenant against assignment—Breach—What amounts to—Condition against assignment, transfer of right or interest, or under letting without sanction of lessor—Unregistered agreement of sale by lessee subject to sanction—Agreement constituting and entitling of covenant

rights granted by lined a covenant against at neither the lessee nor under the lessee should any right or interest; there or any portion of the pre without the assent of the

work the quarries for his own profit. The contract though in writing was not registered. B entered into possession and worked the quarries upon the terms of the agreement of sale, but the Board of Revenue refused

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Held, (1) that there was no sub-letting by the lessee-company to B, there being nothing in the agreement pointing to a relationship of landlord and tenant between the company and B; (2) that the effect of the agreement was to give B an agency coupled with an interest—and it was not unusual to have an agency coupled with interest—though B was not to the lessee's agent in working the quarries; (3) that the agreement though it purported to invest B with a definite interest in the quarries and to that extent was a transfer of an interest, was not an effective transfer as it was inoperative for want of registration, and (4) that consequently there was no breach of the covenant which would entail a forfeiture of the lease. (*Sir George Loder*.) SECRETARY OF STATE, KUCHIWAR LINE AND STONE CO., LTD. 32 S.L.R. 276—42 O.W.N. 593.

1938 A.L.J. 72—1938 A.W.R. (P.O.) 19—1938 P.W.N. 1—1938 L.R. 25—1938 A.L.R. 25—4 B.R. 198 (2)—1938 M.W.N. 115—1938 Q.W.N. 153—1938 R.D. 211—66 C.L.J. 485—10 B.P.C. 130—40 B.M.L.B. 292—1938 O.A. 231—45 I.A. 45—17 Pat. 69—172 I.C. 443—47 L.W. 3—18 Pat.L.T. 1001—A.L.R. 1938 P.O. 20—(1938) 1 M.L.J. 209 (P.O.).

—*Lease for propagating lac*—Subsequent lease in respect of same area to another for bringing jungle under cultivation—*Lease, if consistent*.

It is open to a Zamindar to give a lease for propagating lac and subsequently to give a lease in respect of the same area to another for bringing jungle under cultivation. There is nothing inconsistent in the two leases and if the subsequent lessee in clearing his land damages the trees of the previous lessee, the latter will have a remedy in the Civil Court but not in the Revenue Court (*Bomford, J. M.*) RAGHUBIR v ASHRAP ALI 1937 B.D. 470

—*Notice to quit* See LANDLORD AND TENANT—NOTICE TO QUIT

—*Power to grant—Donee in possession—Lease during pendency of suit to set aside gift on breach of a covenant—Suit though dismissed by trial Court, ultimately decreed by appellate Court—Donee, if a trespasser*.

suit by the trial Court could not render the possession of the donee over the gifted property lawful. The appellate decree relates back to the date of the cause of action with respect to which the suit is brought. As the donee was not in lawful possession, he was not competent to execute a permanent lease of the properties con-

1938 B.D. 463—175 I.C. 902—1938 A.L.R. 497—1938 A.L.J. 333—A.I.R. 1938 ALI 316.

—*Power to grant—Manager of family of co-sharers*.

The manager of a family has powers to give leases which are in the interest of the family. The rent must be a fair and reasonable rent. (*Bomford, J. M.*)

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NATHU RAM v. SALIG RAM. 1938 E.D. 251—1938 A.W.R. (B.R.) 87.

—*Registration—Validity—Addendum signed only by lessee—Registration if proper*.

A registered lease, the terms of which regarding area, could be ascertained with certainty, did not name actually the villages affected. A list of those villages signed only by the lessee was appended to the lease on being required by the Registering Officer, who was of the view that the area was not sufficiently delimited.

Held, that the lease was properly registered, though the addendum was not signed by both the parties. No doubt the inclusion of the list would not preclude the lessor from contesting its accuracy. (*Stone, C.J. and Purand, J.*) MULJI SICKKA & CO. v. NURMOHAMMAD. A.I.R. 1938 Nag. 377.

—*Renewal clause—Renewal dependent on fresh assessment—Duty of landlord*.

Where the execution of a fresh *kabuliat* by the tenant is dependent upon a fresh assessment, it is for the landlord to make the fresh assessment and then call upon the tenant to exercise his option. In such a case the landlord before he can treat the lease as determined is bound to give notice to the existing tenant for exercising an option of renewal. (*S. K. Ghose and Edgley, J.J.*) PRODYOT COOMAR TAGORE v. MAYNUDDIN MIA. 68 C.L.J. 435—A.I.R. 1938 Cal. 724.

—*Residential lease—Lease mentioning residence as its object—Land described as 'bagat'—Landlord using in litigation words appropriate to agricultural tenancy—Nature of lease*.

Where a lease expressly states that its object is to

—*Residential lease—Lease mentioning residence as its object—Land described as 'bagat'—Landlord using in litigation words appropriate to agricultural tenancy—Nature of lease*.

Where a lease expressly states that its object is to

—*Rights of lessee—Area of leasehold less than that stated in lease-deed—Selami and royalty—If liable to be*

royalty fixed in the deed is not liable to be reduced. (*S.K. Ghose and Patterson, J.J.*) HESHAJI LALJI v. PRAMALL GAYENKA 67 C.L.J. 521—42 O.W.N. 405.

—*Right to minerals—Grant of palm lease—Absence of covenant relating to working of minerals—Lessors right to minerals declared—Sub-lease to work*
—*Lessors*
—*Nature*

covenant relating to the pen- at to the minerals, the lessee granted a sub-lease to work the mines. After the right of the lessors was declared, a suit was brought against the lessee to which subsequently the sub-lessees were also added, for damages, in respect of the coal wrongfully extracted. On a contention that the lessee was not liable for the wrongful extraction of coal by the sub-lessee it was held that on the facts both the lessee and sub-lessee were jointly liable as joint

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tort-feasors in respect of the working of the coal. (*Wort and Manohar Lal, J.J.*) **MANGOBINDA SADHU v.**

by tenant—Effect—Estoppel. See **LANDLORD AND TENANT—TRANSFERABLE TENANCY**. 17 Pat. 358.
Validity of—Lease for cultivation during pendency of partition. See **PARTITION—PROCEEDINGS FOR**. 1938 E.D. 286.

LEGAL PRACTITIONER

See also (1) **BAR COUNCILS ACT**.

(2) **LEGAL PRACTITIONERS ACT**.

Admission—Point of law—Binding nature of.
The fact that the counsel has noticed the objection as to limitation does same, as counsel's binding. (*Dalip*)
BANK OF INDIA LTD., LAHORE

Authority—Compromise.

In the absence of a power-of-attorney a pleader is not competent to effect a compromise so as to bind his client. (*Din Mohamed, J.*) **JARNAIL SINGH v. NARAIN KAUR**
40 P.L.R. 664—
A.I.B. 1938 Lah. 766.

Authority—Offer to be bound by special oath on behalf of his client—Propriety of—Special authority—Necessity

Pleaders should be careful not to make any offer on behalf of their clients to be bound by any special oath except in the presence of the party or on express written authority to that effect. (*Pollock, J.*) **LAXMIBAI v. BAJIRAO**
172 I.C. 421—10 E.N. 207—
A.I.B. 1938 Nag. 64.

Disciplinary action—Considerations—Conclusion of criminal proceedings—Presumption of correctness.

taken against him is whether upon a perusal of the facts

moral turpitude. (*Roberts, C.J. and Dunkley, J.*) **U KUN, BARRISTER-AT-LAW, In the matter of.**

A.I.B. 1938 Rang. 394

Disciplinary action—Conviction—Case sent to Bar Council for enquiry—Its duty.

Where a legal practitioner has been convicted of a criminal offence and his case is sent to the Bar Council for enquiry to determine if any disciplinary action was called for, the Bar Council should merely record the conviction and should call on the legal practitioner to show cause why action should not be taken against him. It is not open to practitioner.
BARRISTER-AT

Duties—

There is a profession, like the legal profession, to exercise care and due diligence in the persons whom they employ, and if they choose to employ a person known by them to be irresponsible without taking adequate steps to keep a

LEGAL PRACTITIONER.

close personal check upon his actions, then they are themselves at fault and will become liable to be called to
ONS v.
g. 370.

ay a Counsel a cer-
m as his munshi's
entitled to sue for
his fee and also for the munshi's. (*Tek Chand, J.*)
GOPI NATH v. KANCHI RAM. 40 P.L.R. 12 (1)—
176 L.O. 751—11 E.L. 235 (1)—
A.I.B. 1938 Lah. 306.

—Misconduct—Acting for opposite party, though in different proceedings—Purchase of client's decree—Execution for an amount known to be in excess of what is due—If on offence under R. 13 of the Legal Practitioners Act.

being professionally
when the procees-
of Court framed
inhibits a practi-

be in excess of that which was actually due, amount to a grave professional misconduct. (*Leach, C.J. Paragachariar and Pandurang Rao, J.J.*) **P. LINGAMURTHI, In re**. I.L.R. (1938) Mad. 399—1938 M.W.N. 220—
10 E.M. 641—174 I.C. 44—47 L.W. 192—
A.I.B. 1938 Mad. 276 (F.B.).

—Misconduct—Conviction for criminal offence—Subsequent disciplinary action—Scope of enquiry—Advocate convicted of defamation—Disciplinary action—If called for.

When criminal proceedings are taken against a pleader or an advocate and finally concluded, they must be taken to have been rightly decided, and the question to be determined in a subsequent enquiry as to whether the advocate or pleader ought to have disciplinary action taken against him is whether upon a perusal of the facts

victed of the offence of defamation, the High Court,

not ascertained the truth, should be careful not to aggravate the defamatory nature of the matter by lending their support to an implied acceptance of it without careful investigation into its nature. (*Roberts, C.J. and Dunkley, J.*) **In the matter of AN ADVOCATE**
1938 Rang.L.R. 125 (S.B.).

—Misconduct—Suggestion to bribe an official—Proceedings due to a grudge—If an excuse.

For a member of the Bar to suggest that an official or any one should be bribed, amounts to professional

—Professional misconduct—Advocate cited as witness for prosecution—If disqualified from appearing for defence. See **CRIMINAL TRIAL—EVIDENCE**.

48 L.W. 276—(1938) 2 M.L.J. 446.

LEGAL PRACTITIONER.

—*Solicitor—Liability for costs—Solicitor of next friend of minor plaintiff—Liability—If extends against minor—Change of next friend—Right to withhold documents from new next friend.*

Where a solicitor is engaged by the next friend of a minor plaintiff the client is the next friend and not the minor, that the solicitor has

does not exist against the minor, where, the time, there is a change of next friend and a new next friend comes in, the solicitor engaged by the former next friend is bound to hand over to the new plaintiff and documents, etc., though he may have his costs of the suit from the old plaintiff, not withhold the documents, etc., friend by pleading his lien. (*Brownlie v. Ranganekar, J.*)

SHAFER & CO. v. HIRACHAND GANGJI. I.L.R. (1938) Bom. 749-177 I.C. 727-11 B.R. 117-40 Bom.L.R. 691-A.I.R. 1938 Bom 418.

—*Unprofessional conduct—Advocate filing appeal on last day of limitation without sufficient stamp under agreement with client—Duty of advocate to refuse engagement in such cases.*

The filing of a memorandum of appeal on the last day of limitation without sufficient court fee, knowing full well that it is under stamped and hoping that the Court would be persuaded to accept the deficiency later is certainly not in consonance with the high traditions of the profession to which the advocate belongs. An advocate who is approached by a client to so file an appeal should refuse to file it unless the full amount of the court fee was first paid. The High Court will not tolerate practice of this nature.

Per *Mocket, J.*—It is undesirable for practitioners to lend themselves to the practice of deliberately filing appeals under stamped. (*Leach, C.J., Mockett and*

was a man of 60 years and had till then an unblemished character.

Held, that though the above circumstances made the case distressing the Courts have a duty to the public and to the profession itself, and that that duty could

Tampering with witnesses—Removal from rolls.

pleaders, (*Roberts, C.J. and Dunkley, J.*) In the matter of P. A LOWER GRADE PLEADER KYAUKSE 177 I.C. 731-19 B.R. 163-A.I.R. 1938 Rang 294

—*Ss. 13 and 14—Misconduct—Allegations amounting to criminal charge—Proper procedure.*

Y. D. 1938-56

LEGAL PRACTITIONER'S ACT (1879), S. 13.

Where the allegations against a legal practitioner amount to a criminal charge, the proper procedure is to prosecute him criminally in the first instance before bringing proceedings under the Legal Practitioners Act. Otherwise he is likely to be prejudiced in as much as these are summary proceedings in the nature of a

—*S. 13—Misconduct—Money given to pleader for payment to arbitrator—Appropriation by him towards*

J.J.) B. A PLEADER, SIMLA. In the matter of 175 I.C. 29-10 B.L. 659-A.I.R. 1938 Lah. 248.

—*S. 13—Misconduct—Pleader suggesting bribery—Offence.*

For a legal practitioner to suggest that an official or any one should be bribed amounts to professional misconduct, and professional misconduct of a grave nature. The fact that bribes of this nature have been given by others is no excuse. The fact that proceedings in respect of such offence are instituted against a pleader as the result of a grudge makes no difference to the gravity of the offence, and cannot be pleaded in excuse. (*Leach, C.J., Varadachariar and Mockett, J.J.*) N. G. PLEADER, MANNARGUDI, In the matter of.

I.L.R. (1938) Mad. 457-173 I.C. 1008-10 B.M. 665 (1)-39 Cr.L.J. 398-1938 M.W.N. 219-A.I.R. 1938 Mad 264-(1938) 1 M.L.J. 410 (F.B.).

—*S. 13—Pleader undertaking responsibility for defaulting by his co-trustee—Disciplinary action if called for*

Where a pleader who is one of the trustees of an

trustee (*Roberts, C.J. and Dunkley, J.*) U PO AUNG, HIGHER GRADE PLEADER, In re, 175 I.C. 166-

39 Cr.L.J. 543-10 B.R. 466-A.I.R. 1938 Rang 158.

—*S. 13—Unprofessional conduct—Pleader appearing—contra—decree ally due*

of her management of his estate during his minority and on 15-12 1920 sed him for past speris and got a ce for the plaint his mother, half his half of the and the Govern-

ment in petition maintain 1925. on 14-1

LEGAL PRACTITIONER'S ACT (1879), S. 13.

Application for execution in respect of his decree against his mother. On 18.1.1935, he filed a memorandum on behalf of the mother in the maintenance decree showing several payments which had been made by the son (petitioner) towards the decree obtained by his mother; the amount shown was still due under the decree was not.

making an adjustment in respect of a payment made by the petitioner.

Held, (1) that P.L., was not guilty of conduct in filing an execution petition decree, and there was nothing proper in his acting for the petitioner against his petitioner's suit had nothing to do with suit, (2) that the pleader was, however, guilty of unprofessional conduct in having instituted execution proceedings against his own client (the petitioner) with full knowledge of the real position and in having obtained a larger sum than was in fact due by him, (3) that the

Act prohibiting practitioners from their clients or others any interest in by the Court in which they practise *Varadachariar and Pandrang Row, MURTHI, In the matter of I.L.R. (1*

47 L.W. 192=10 B.M. 641=174 I.C. 44=1938 M.W.N. 220=A.I.R. 1938 Mad. 276 (F.B.).

—S. 13—Unprofessional conduct—Pleader working for party in respect of property—Allowing own father to purchase same property and appearing for

which he has been advocating in a Court of justice, or when a pleader intends appearing against a man in a case which is directly against the case which he was advocating for him before, it is desirable that he should give a formal notice to his late client and bring the matter to the notice of the Court, if for no other reason, at least to save himself from being charged by the client in future. A Hindu pleader allowed his father to pur-

of the sale transaction, he did not raise any objection against the conduct of the pleader for more than 11 months.

Held, that though the pleader did not act up to the standard of propriety which was expected of a member of the legal profession, who must enjoy the complete confidence of the litigant public and the Court, and though technically his appearing subsequently against him was improper, yet no disciplinary action was justified. (*Courtney-Terrill, C. J. James and Mahomed Noor, J.J.*) QURBAN ALI KHAN v. G. A.

LEGAL PRACTITIONER'S ACT (1879), S. 13.

PLEADER. — 172 I.C. 849=1938 P.W.N. 115=4 B.E. 192=10 R.P. 357 (2)=30 Cr.L.J. 222=A.I.R. 1938 Pat. 28 (S.B.).

—S. 13 (b) and (f)—Pleader entering record-room without permission of Judge in charge in defiance of standing order of District Judge—Propriety—Duty of

public or pleaders are strictly obeyed. (*Courtney-Terrill, C.J., James and Manohar Lal, J.J.*) KARUNA KANT PRASAD. PLEADER, *In re*. 17 Pat. 261=176 I.C. 896=4 B.E. 787=11 R.P. 126=A.I.R. 1938 Pat. 385 (S.B.).

have two registered clerks, but does not insist that any clerk should be registered. (*Leach, C.J., Genta and Krishna Swami Aiyangar J.J.*) G. S. PLEADER, CHICACOLE, *In re*. 1938 M.W.N. 961=48 L.W. 663=A.I.R. 1938 Mad. 965=1938 M.W.N. 961 (F.B.).

—S. 13 (f)—Conviction for—Offence under S. 377, I. P. Code—Offence committed in early life—If a disqualifying circumstance—Non-disclosure of offence when applying for admission—Propriety.

An offence of the character of one under S. 377, I. P. Code, committed by a pleader or advocate cannot be ordinarily condoned. Where, however, the offence was

his admission as a pleader, when required to give all necessary information at the time of his enrolment, he commits another serious offence of deceiving the authorities and the High Court is entitled to take him to task for it. Persons applying for being admitted to be pleaders should fully and frankly disclose all the circumstances of their past career with the knowledge that the High Court would take into consideration every matter which ought properly to be dealt with by it. (*Roberts, C.J. and Dunkley, J.*) T.K., A HIGHER GRADE PLEADER, *In the matter of*. 175 I.C. 124=

LEGAL PRACTITIONER'S ACT (1879), S. 14.

IN R.B. 465 (2)—39 Cr.L.J. 540—
A.I.R. 1938 Rang 159.

—S. 14—Duty of High Court—Unprofessional conduct—Practitioner betraying trust and confidence reposed by client—Disciplinary action.

Where a legal practitioner commits a serious breach of trust in violation of the confidence reposed in him by

discharging his duties faithfully like persons of trust and honour, has betrayed the trust, such conduct must be severely dealt with. (*Courtney-Terrell, C.J., James and Manohar Lal J.J.*) A. B. A. MUKHTEAR, *In the matter of*, 17 Pat. 96—172 I.C. 877—4 B.B. 184—10 R.P. 363—39 Cr.L.J. 203—18 Pat.L.T. 961—

A.I.R. 1938 Pat. 17 (8 B.)

—S. 14—Jurisdiction—Unprofessional conduct—Charge of—Jurisdiction to initiate and draw up proceedings in respect of act committed in matter before another Court.

If a pleader or a mukhtear practising in a Court

pleader or mukhtear practises has ample jurisdiction to initiate proceedings, though the particular matter in reference to which he commits the act complained of might not be before that

J., James and Manohar

TEAR, In the matter of.

4 B.B. 184—1

18 Pat.L.T. 961

—S. 14—Procedure

up charge and holding

made out and no report

proceedings—District Judge disagreeing with finding—

Proper course—Reference of proceedings without fresh

proceedings and without recording of evidence—Com

petency—Powers of High Court

Subordinate Court, he is at liberty to draw up fresh

the High Court. It is also open to draw up fresh proceedings and the matter after giving notice to the hearing his defence, if any. (*Courtney-Terrell, C.J., James and Manohar Lal, J.J.*) KARUNA KANT PRASAD, PLEADER, *In re* 17 Pat. 261—

LETTERS PATENT (Bombay), Cl. 15.

176 I.C. 896—4 B.B. 787—11 R.P. 126—
A.I.R. 1938 Pat. 385 (S.B.).

—S. 36—Jurisdiction of District Court—Nature of—Order declaring person to be tout—Revision—High Court's jurisdiction. See C.P. CODE, § 115.

(1938) 2 M.L.J. 100.

—S. 36—Order declaring person tout—Revision—Power of High Court. See C.P. CODE, S. 115.

47 L.W. 578.

LETTERS PATENT (All.) Cl. 10—Refusal to set aside abatement of second appeal by single judge—If a 'judgment'—Leave—Necessity.

An appeal under Cl. 10 of the Letters Patent (All.) does not lie, against an order of a single judge refusing to set aside an abatement of a second appeal, for it does not amount to a judgment within the meaning of the clause. If it amounted to judgment, then only would leave be necessary. (*Bennet, A.C.J. and Verma, J.*) LAXMI NARAIN v. MOHAMMAD AKBAR, 1938 A.W.B. (H.B.) 774—1938 A.L.J. 1107.

—(All.) Cl. 27 and C.P. Code, (1908), § 98—Difference of opinion among judges hearing first appeal—Procedure to be adopted.

note made payable in Poona, Bombay or elsewhere—Place of payment—Option—If rests with creditor or debtor—Demand by creditor to pay in Bombay—Effect—

demand not having been complied with, the plaintiff applied to the High Court for leave to sue the defendant in Bombay

Held, that the promissory note was payable any-

176 I.C. 760—40 Bom.L.R. 252—
A.I.R. 1938 Bom. 278.

Cl. 15—Judgment—Order on original abatement of suit—Appeal—C.P.

edge of the
an abate-

Such an

not affect the

merits of the dispute between the parties so as to be appealable under Cl. 15 of the Letters Patent (*Beaumont, C.J. and Wadia, J.*) M. F. ALNEIDA

LIMITATION.

NARAYANA CHETTYAR.

Determining factor.

Per *Stone, C.J.*—In considering remedy is barred one looks not at the cause of action, that is, the facts which have to be made and sought can be given. (*Stone, C.J. Ross and Digby, J.J.*)
ASARAM v. LUDHESHWAR. 177 I.C. 6—
 11 N.N. 109—A.I.R. 1938 Nag. 335 (F.B.).

Extension of time—Right of auction-purchaser—Order of executing Court referring him to regular suit—Fresh start.

Anything done behind the back of a debtor does not tend to extend the period of limitation originally provided for the recovery of a debt under the Limitation Act. One *R.* along with three other persons, obtained a contract from the Municipal Committee and the firm in whose name the contract stood deposited certain sum with the Municipality by way of security. Subsequently one *S.* instituted a suit for recovery of some money against *R.* in his individual capacity, decree in execution of which amount lying in deposit with amount was purchased by *B.* other partners of the firm in whose name the contract had been obtained instituted a suit against the Municipality for recovery of the deposit money and obtained a decree. Throughout the pendency of no attempt to be brought on record as ever instituted a suit for recovery of against the Municipality on the basis of *R.*'s rights in the deposit money. The suit was beyond the period of limitation.

Held, that *B.* could not claim extension of limitation period. Had *R.* put forward a claim against the Municipal Committee for recovery of the deposit amount he could sue only within period prescribed for the suit. His rights were in execution of his decree purchased by *B.* who is assignee from *R.* stood in his shoes and could not by the mere fact of his purchase override the provisions of the Limitation Act. It could not be argued that once attachment of the amount under the Limitation Act ceased to operate auction purchaser, was at liberty at any time he liked in complete reliance on the provisions of the Limitation Act. *M.*

Din Mohammad, J.J.) *ISHAR DAS v. RALLIA RAM*
 40 P.L.R. 768—A.I.R. 1938 Lah. 437.

Order on time barred application—Equality. See
C. P. CODE, O 20, R 11 (2). 1938 A.M.L.J. 86.

calculated strictly under such circumstances.
S.M. and Bonford, J.M.) *DWARJKA*
MUZAFFAR HUSAIN. 1938 F.B.

Starting point—Decree holder taking
 in discharge of his decree—Mortgagor consenting to
 repay debt on demand—Money, when becomes payable.

LIMITATION ACT (1908), S. 3.

the deed, namely, when demand was made upon the
 mortgagor to pay. (*Gentle, J.*) *BALASUBRAMANIA*
CHETTY v. MANICKA CHETTYAR 1938 M.W.N. 113—
 A.I.R. 1938 Mad. 429.

LIMITATION ACT (IX OF 1908)—If exhaustive—Considerations of expediency—If can affect interpretation.

The Indian Limitation Act is an exhaustive Code in itself and effect must be given to its provisions unhampered by questions of expediency and the like. (*Stone, C.J. and Bose, J.*) *RAJARAM v. PAIKU,*
 1938 N.L.J. 338—A.I.R. 1938 Nag. 534.

Applicability—Suits and applications under Agr. Tenancy Act.

Act do not
 by the Agr.
 AKHRUDDIN

1938 A.W.E. (H.C.) 145—1938 E.D. 367—
 1938 A.L.J. 208—175 I.C. 20—10 E.A. 644—
 1938 A.L.R. 374—A.I.R. 1938 All. 213.

under Co-operative
 is—Limitation.
 award under the
 falls within S. 3 of

the Limitation Act and the Limitation Act, is applicable to such an application. (*Rangnath and Wadia, J.J.*) *MARATHA CO-OPERATIVE CREDIT BANK OF DHARWAR v. KASHAY TRIMBAK HUNDE.*
 40 Bom. L.R. 882—177 I.C. 897—
 A.I.R. 1938 Bom. 424.

S. 3—Presentation—Validity of—Execution application—Presentation to proper officer beyond Court hours on last day of limitation—If valid presentation,

perly exercise
 presented to
 ation on the
 the presentation

tion is valid. No ratification by the Judge is necessary
 for such presentation. (*Purank, J.*) *KISANLAL RAN*
NIWAZ v. NARAIN. 174 I.C. 597—10 E.N. 404—
 A.I.R. 1938 Nag. 46.

Ss 3 and 9—Scope and effect of—Exhaustive—quintessential—of the have

provisions. (*Rangnath and Wadia, J.J.*) *NARAYAN*
v. GURUNATHGOUDA. 40 Bom. L.R. 1134—

LIMITATION ACT (1908), S. 3.

—Ss. 3 and 2.

*mosque—Limitation
Continuing wrong.*

Per Young, C.J.—S. 3 of the suit and provides wakfs, religious in- dedicated to sacred uses. A suit relating to a mosque is, therefore, subject to the law of limitation and prescription laid down in Art. 144 and S. 23 of the Limitation Act. If the Sikhs have been in adverse possession of a mosque for over twelve years, the Moslems lose all rights in the land and building, including the right of worship. The Sikhs on the other hand by virtue of S. 3 of the Limitation Act obtain a good title to the land and building thereon and have full rights therein as owners. There is no duty cast on the Sikhs to maintain its original sacred character, or to maintain it as a building. If, therefore, the Sikhs demolish the building of the mosque after the perfection of their title by

LIMITATION ACT (1908), S. 5.

pure does not make S. 4 inapplicable. O. 21, R. 91 A framed by the Bombay High Court is plainly conditional, and does not compel an applicant to make his application to the Collector rather than to the Court, which has transferred the execution to the Collector. (*Beaumont, C.J.*) *VEERAPPA v. IRATAPPA*.

40 Bom L.R. 152=175 I.C. 221=10 R.R. 529= A.I.R. 1938 Bom. 209

—Ss. 4 and 20—*Promissory note: getting barred during vacation—Endorsement of payment after date of limitation, but during holidays—If gives a fresh start of limitation.*

The endorsement of payment on the back of a promissory note does not constitute a fresh start of limitation. 4 of 1938 A.L.R. 870=1938 A.L.J. 1183= A.I.R. 1938 All. 608.

—S. 4—*Scope and effect.*

All that S. 4 provides is that the suit might be brought on the day when the Court reopened if the Court happened to be closed when the period prescribed expired. The words of S. 4 do not extend limitation. (*Goldstream, Dalip Singh and Dan Mohammad, JJ.*) *SHANTI PARKASH v. HARNAM DAS*

I.L.R. 1938 Lah. 193=174 I.C. 277=10 R.L. 540= 40 P.L.R. 533=A.I.R. 1938 Lah. 234 (F.B.).

or filing appeal expiring for copies made on or obtaining copies—If on holiday—Appeal, if See LIMITATION ACT, 40 P.L.R. 74.

SS 12 AND 4,

—S. 4—*Applicability—Application for a decree.*

Even if it be assumed that the application for obtain-

of superior Court to interfere.

Under S. 5 of the Limitation Act, the Court has a discretion to excuse the delay or to refuse to excuse it. Such discretion should be exercised judicially and not in an arbitrary manner. The superior Court has power to interfere with a wrong exercise of discretion by the Subordinate Courts in such cases both in its revisional

GUNAND JHA 17 Pat. 507=19 Pat. L.T. 309= 177 I.C. 564=4 B.R. 841=11 R.P. 161= 1938 P.W.N. 818=A.I.R. 1938 Pat. 413.

—S. 5—*Extension of time—Duty of Court.*

The period for preferring an appeal cannot be extended simply because the appellant's case is hard on for sympathy, nor will the Courts extend the

The provisions of S. 4 of the Limitation Act are quite general and apply to an application under S. 12(2) of the Oudh Courts Act, (*Zia ul Hasan and Yorke, JJ.*) *RAM DAS v. CHEDI*

1938 O.A. 1938 O.L.R. 359=

—S. 4—*Applicability an*

—Last day of limitation expiring on Sunday—Payment of interest next day—If saves limitation. See LIMITATION ACT, S. 20. 47 L.W. 726.

—S. 4—*Applicability—Execution transferred to Collector and sale by latter—Application to set aside sale*

—Limitation expiring on holiday of Civil Court—Application made on reopening date—If in time—Court

LIMITATION ACT (1908), S. 5.

I.L.R. 1938 Nag. 409=173 I.O. 369=
10 B.N. 302=A.I.R. 1938 Nag. 156.

—S. 5—If can be invoked for the first time in

to attend Court as per Court's direction.

An appeal was filed by a counsel on behalf of one S. During the hearing of the appeal the signature on the power-of-attorney was doubted. The counsel filed certain affidavits the purport of which was that power of attorney had been signed by S in blank at the time he started the litigation. The court, however, was not satisfied with the evidence and the counsel's signature was not admitted. The court, therefore, dismissed the appeal under O. 41, R. 17, C. P. Code.

Held, that the Court had discretion to direct the personal appearance of S in order to satisfy itself as to the genuineness of his signature.

Held further, that the non-appearance of S because it did not suit his convenience was not a reasonable cause for employing S. 5, Limitation Act, (*Mackney, J.*) **KONG HIP LON & CO v. C. A. M.A.L. FIRM** 177 I.O. 364=11 B.E. 116=A.I.R. 1938 Bang. 214

—S. 5—Sufficient cause—Application appeal to Privy Council—Non-present owing to agreement between parties to end

Where an application for leave to appeal to Privy Council is not presented within the time law owing to an agreement between the parties, the opposite party not to continue the litigation as the parties had incurred enormous expenses and accept as final the decision of the High Court, the opposite party goes back on the agreement.

LIMITATION ACT (1908), S. 5.

cannot be held to constitute "sufficient cause" for the meaning of S. 5 of the Limitation Act. The meaning of S. 5 of the Limitation Act is not to be extended to entitle him to an extension of time for the appeal. (*Rangtaker, J.*) **JOTIBA v. 40 Bom.L.R. 957=178 I.O. 307=**

A.I.R. 1938 Bom. 459.
 —S. 5—Sufficient cause—Mistaken advice of counsel—If ground for excuse of delay.

A competent lawyer would be a meaning of S. 5 of the Limitation Act. In the operation of the section, it is not a mistake of the lawyer was of may arise even amongst legal advisers. A litigant should not be excused for error or mistaken advice given by counsel. (*Dhavit and Manohar Lal, J.J.*) **NRISINGHA CHARAN NANDY v. TRIGUNAND JHA.**

17 Pat. 507=11 Pat.L.T. 309=177 I.O. 564=
4 B.E. 841=11 B.P. 161=1938 P.W.N. 818=
A.I.R. 1938 Pat. 413.

—S. 5—Sufficient cause—Mistake of legal adviser.

or want of reasonable skill, but such as even a skilled person might make. It is only in the latter case that the litigant would be allowed the benefit of the section. (*M. N. Mukerji and S. K. Ghose, J.J.*) **PHANI BHUSAN PAL v. SRI. NALINIBALA DAS.** 67 C.L.J. 107.

—S. 5—Sufficient cause—Mistake of pleader.
 A mistaken advice of counsel is not sufficient to justify extension of time being granted under S. 5 unless the advice was given in good faith that is, with due care and attention. In a case the value of the subject-matter of

=A.I.R. 1938 Lah. 81.
 Mistake of pleader.

without due care and the advice of such a pleader is not entitled to the benefit of S. 5 of the Limitation Act. (*Bose and Puranik, J.J.*) **KRISHNA RAO v. TRIMBAK.** I.L.R. 1938 Nag. 409=173 I.O. 369=10 B.N. 302=A.I.R. 1938 Nag. 156.

—S. 5—Sufficient cause—Wrong information given by pleader's clerk.

Where the appellant was misled by the wrong information given by his pleader's clerk as to the date of the re-opening of the Court and presented the appeal after the period of limitation,

under S. 476 B., Cr. P. Code—Ignorance of filing of complaint. See LIMITATION ACT, ART. 154 AND S. 5, 1938 N.L.J. 183

—S. 5—"Sufficient cause"—Ex parte decree—Proceedings to set aside in trial Court and appellate Court—Subsequent appeal from ex parte decree—Right to extension of time for appeal.

The fact that an appellant appealing from an ex parte decree against him took proceedings both in the trial Court and in the appellate Court to set aside the ex

LIMITATION ACT (1908), S. 6.

Held, that
was given 1
and that 2

LIMITATION ACT (1908), S. 7.

his son and
education was
a question
of reason of

—Rizal.

Where marital alienation by the alienation suit by other action, to set a is also not alienation.

an after born reversioner cannot claim the benefit of S. 6, Limitation Act, in his own right, he cannot be deprived of the benefit of the extended period claimable by the

brothers, (*Barlee and Macklin, J.J.*) SURESH
CHANDRA v DAI ISHWARI. 40 Bom.L.R. 127 =

—*Applicability*—*Hindia joint family consist-*
ing of minor brothers—*Alienation by mother as*

11 E.P. 179.

BHIKARCHAND v. LACHHMANDAS.

1 L.R. 521=177 IC 286=11 RB 71=
AIR 1938 Bom 392

-Family business—A and B Proprietors
represented by certificated guardian—

Power of A to give valid discharge

A and B were preceptors of a family business in two equal shares. B, who was a minor, was represented by a guardian appointed under the Guardians and Wards Act. A suit was filed by A and B for money due on account of price of goods supplied by their firm, within three years of the date on which B attained majority. The claim in suit was admittedly made about 14 years after the transaction in question.

Held, that A was not in the position of a managing member of an ancestral joint family business, who was competent to represent B, who had a certificated

benefit in a suit where both the assignor and assignee join in the suit as plaintiffs, so long as the assignor has a subsisting right to sue at the date when the suit is brought, although the benefit would not be available had the assignee alone brought the suit (*Divatia, J*)
BANDU ANNAJI v YESHWANT RAMRAO

—3.7—Applicability—Decree in favour of karta, his son and grandson, a minor—Execution application filed more than three years after decree—Inhibition under O. 32, R. 6—If can be invoked.

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LIMITATION ACT (1908), S. 7.

dian, and he was not, therefore, competent to give any valid discharge as contemplated by S. 7 of the Limitation

DAI BIRI.

67 C.L.J. 88.

—S. 7—*Joint Hindu family—Elders of several*

major, and cannot give a valid discharge without the concurrence of the latter under S. 7

and Sen, J.J.)
BASAPPA 40 B.C.

—S. 10—*Applicability—Conditions—Suit against*

LIMITATION ACT (1908), S. 10.

—S. 10—*Applicability—Entrustment of money for purpose of investment.*

If the Limitation Act applies to a case of entrustment of money for the specific purpose of investment, *Jack, J.*) KALIPADA BHATTACHARJEE v. IMAR PAL. I.L.B. (1938) 2 Cal. 81 = 42 C.W.N. 381 = 66 C.L.J. 541 = 11 E.C. 148 = 178 I.C. 681 = A.I.R. 1938 Cal. 336.

—S. 10—*Applicability—Executor under will—If express trustee—Suit for arrears of annuity made expressly payable under will and descendible in male line generation after generation—Limitation. See LIMITATION ACT, ART. 123.*

1938 P.W.N. 186 = 19 Pat.L.T. 202.

—S. 10—*Applicability—Conditions—Suit against Mokhasa in certain zamindari Cl. 6 of S. 34, Madras Zamindars sold for arrears and Government resumed mokhasa and writing off arrears—Regrant unconditionally to*

LASHJI.

176 I.

—S. 10 and Art. 48—*ment to temple deity—High priest—bonds vested in idol—Suit by high priest of late high priest for recovery of, or their value—Limitation.*

Art. 48 of the Limitation Act *detinue*. In the case of a Hindu Religious Endowment which is a gift directly to an idol or temple, the gift is necessarily effected by

the man nor is he a although in him, he is a maladministration, also pi deity, no description gives the nature of endowment. meaning of S. 10 of the manager of the endowment, is concerned. the present high priest of a widow of the late of certain war bonds belong substitutes, in the possession of alternative for recovery of Rs the said bonds, in case the delivery of the war bonds or their substitutes could not be bad.

Held, that the action was one in *detinue* and was governed by Art. 48 of the Limitation Act and that S. 10 of the Act did not apply, as there was no trust within the meaning of S. 10 and not a person in whom the property (*Wor and Manohar Lal, J.J.*)

arrears. As they to the zamindar ditionally in the From that time zamindar was holding the *mokhasa* in his own right free and discharged all claims of the *mokhasadars*. The resumption proceedings were with the knowledge of the same and aban and the conduct of with that view. An possession of the ought in 1927 for he original entry on trustee and the suit

by attachment of trustee and *cestus que* there was a fiduciary relation end by the resumption of the next writing off the arrears and o the zamindar who held the

running from the date of disclaimer or renunciation. The suit therefore was time-barred. (*Venkataramana Rao, J.*) SESHAGIRI RAO v. VENKATARAMAYYA APPA RAO BAHADUR. A.I.R. 1938 Mad 295.

176 I.C. 209 = 4 B.R.

A.I.

LIMITATION ACT (1908), S. 10.

any specific words but which the law would imply from the existence of particular facts or fiduciary relations are excluded from the operation of the section. One useful test for determining whether any particular trust is within the provisions of the section for the purpose of following hands of the trustee would

(*Biswas, J.*) **KALI PADA D.**
I.L.R. (1938) 1 Cal.

—S. 10—Applicability

Trustees *de son tort* work of S. 10 of the Limitation trust must be first established before the section may be applied against them. (*Biswas, J.*) **HARI DASI DASI.**

—S. 12—Applicability

for obtaining copy of decree deduct—Application for copy, expiry of time for appeal.

the Court was asked to dispense with. The Court on 19-2-1937, dispensed with the copy of the judgment, but refused to dispense with a copy of the decree. A copy of the decree was applied for on 23.2.1937, obtained on 1-3-1937 and filed on the same date.

175 I.C. 508—10 B.B. 563—A.I.R.

—S. 12—Applicability—Suit against annulment—Time taken in obtaining of annulment—If can be excluded. **S. INSOLVENCY ACT, S. 78.**

1937 A.M.L.J. 101

—S. 12—Computation of time—Different applications for copies of judgment and decree—Application for copy of decree filed after expiry of period of limitation for appealing—Time taken to get such copy, if can be excluded

Where there were two different applications on two different dates for copies of judgment and decree, the time taken in obtaining the copy of the decree, can be excluded for purposes of computing the period of limitation even though the application for such a copy was filed after expiry of the time allowed for filing appeals, provided that it was in time after taking into calculation the time taken (*Darling, S.*) **RAM DATTA**

—S. 12

getting copies
In calculating appeal, time taken to get copy of the decree can be excluded (*Rashid, J.*)

—S. 12

taken for obtaining copy of the decree can be excluded

LIMITATION ACT (1908), S. 11.

In computing the period of limitation for a second appeal to the Commissioner against an order of the Collector, the time required in obtaining the copy of the order of the first Court should be excluded, provided that

on the period of limitation prescribed period of

the time required which he fails to make the by time. **BABU v. (B.R.)= 1938 E.D. 78.**

If the days deductible as time holiday, the appeal filed on the within time under S. 4 of the hand, *J.*) **ASA SINGH v. HIRA 40 P.L.R. 74—177 I.C. 872—**

11 B.L. 351—A.I.R. 1938 Lah. 317.

—S. 12—Time "requisite"—Computation of—Day on which copy is notified ready—Exclusion of.

In computing the time requisite for obtaining copy S. 12 of the Limitation Act, the day on which

Holidays—If may be deducted.

An application for copies was made on 6-2-1934 and copying was stopped for want of correct information on 8-2-1934. The correct information was received on 11-2-1934, but as 11-2-1934 and 12-2-1934 were holidays, the information was supplied on 13-2-1934.

Held, as the information could not be supplied on the 11th and 12th February, being holidays, the applicant was entitled to deduct the 11th and 12th February as being part of the time requisite for obtaining copies (*Pollock, J.*) **K. RAI v. THUMAN SINGH**

I.L.R. 1938 Nag 342.

LIMITATION ACT (1908), S. 12.

DAS. L.L.R. 1938 All. 209=1937 A.L.J. 1279=
1937 A.W.R. 1192=174 I.C. 50=1938 A.L.R. 245=
10 B.A. 531=A.I.R. 1938 All. 106.

—S. 12(2)—*Time requisite—Day on which copies are ready—If to be excluded—Delay of one day—Duty of Court to excuse.*

LIMITATION ACT (1908), S. 14.

ves on 22-3-1922. Having been resisted by the defendant-appellant, a third party, in their attempt to take possession the plaintiffs took proceedings under O. 21, R. 97, C. P. Code, the decision was against them and in favour of the defendant. The plaintiff therefore brought a suit under O. 21, R. 103, C. P. Code, in 1926,

J.J. RAICHAND v RAHI NAVA.

40 Bom L.R. 1211.

—S. 12(2) and S. 5—*Time requisite—Meaning*

by the defendants after the plaintiffs had been put into possession by the process-server in execution of the writ of 1930, and that the fresh taking of possession by the

INDRABAHADURSIN

177 I.C. 538=11

—S. 12(2)—“7

of judgment and date of signing of decree—*Right to*

the period of bringing the recover possession, and that even if 1919 be taken to be the point started, the suit was not

time requisite for obtaining S. 12(2) of the Limit Act has not applied for period (Fort, A.C.) KESHWAR MAHTO.

1938 P.W.N. 781.

—S. 13—*Defendant in Secunderabad cantonment Extension of time—If can be claimed.*

Extension of time under S. 13 of the Limitation Act cannot be claimed on the ground of absence of the defendant in Secunderabad cantonment, as it is under the administration of the Government of India. (Jas Lal and Dalip Singh, J.J.) KISALDAR ALI SHAN KHAN v. AHMAD NAWAZ KHAN. 40 P.L.R. 92=

176 I.C. 255=11 B.L. 212=A.I.R. 1938 Lah. 225

—S. 14—*Applicability—Decree in suit under O. 21, R. 103, C. P. Code, setting aside order adverse to purchaser made under O. 21, R. 99—Execution—Delivery*

time, (3) that the earlier decision was not a decision which made the question of present possession a matter of *res judicata*, because delivery of possession was made as a consequence of the decree in that suit; and the subsequent possession was held to have originated subsequently to the service of that writ. Consequently there could be no question of *res judicata* on the basis that this matter had been litigated or might have been litigated in the earlier suit. (Courtney-Terrell, C. J. and James, J.) GAJANAND MARWARI v. NONIDH LAL.

1938 P.W.N. 307=19 Pat L.T. 250=

174 I.C. 630=4 B.R. 470=10 R.P. 538=

A.I.R. 1938 Pat. 321.

LIMITATION ACT (1908), S. 14.

that the cause of action had not accrued, it cannot be said that S. 14 will not apply. (*Rangnekar and Wadia, J.J.*) MANEKLAL v. SHIVLAL

40 Bom. L.R. 1169.

—S. 14—Applicability—Party not described as plaintiff or applicant in previous proceedings—Right to exclusion of time.

the previous civil proceedings in good faith, and if he proves that he may avail himself of S. 14, even though he was not described as a plaintiff or as an applicant in the previous proceedings. Where an award was made under the Arbitration Act in favour of the plaintiff, and the arbitrator on being requested by the plaintiff filed the award in the Court and upon that Court holding that it had no jurisdiction to entertain the award the plaintiff presented the award in another Court.

Held, that the time taken in the former Court for ascertaining whether it had jurisdiction to entertain the award or not, should be excluded, so long as that Court was determining upon the question whether the award should be taken off the file on the plea of jurisdiction or not, the award was enforceable as a decree. No proceedings could be taken in any other Court for the purpose limitation was capable and the plaintiff was a Court of justice. (*Rupchand Bilaram, A.J.C. and Dadiba C. Mehta, A.J.C.*) AILDAAS MADHOWDAS v. SOBHOMAL PURSOMAL

32 S.L.R. 151.
174 I.C. 172—10 B. & 246—A.I.R. 1938 Sind 50

—S. 14—Applicability—Prior suit in High Court—Plea by defendants of status of agriculturists—Suit withdrawn with liberty—Fresh suit—Period taken up by first suit—Right to deduct—C.P. Code, O 23, R 2—Scope and effect of Sec C. P. Code, O 23, R. 2.

40 Bom. L.R. 377
—S. 14—Applicability—"Prosecuting"—If includes defending a suit

One essential condition for the application of S. 14 of the Limitation Act is that the plaintiff in the later suit must have been prosecuting with due diligence another civil proceeding. Where the plaintiff in the later suit was a defendant in the prior suit, he cannot be said to have been prosecuting a suit or civil proceeding at the time. Merely defending a suit is not, and cannot amount to, the prosecution of a suit. (*Rangnekar and Wadia, J.J.*) NARAYAN v. GURUNATHGOUDA.

—S. 14—Benefit of—Awa under Agra Tenancy Act thrown away of review—Failure—Suit any Act—Benefit of time spent in review, if available.

Where there has been an ejectment by fraud and the remedy by way of review has failed and subsequently a suit under S. 99 of the Agra Tenancy Act is filed, the benefit of S. 14 of the Limitation Act is not available

LIMITATION ACT (1908), S. 14.

to the plaintiff to cover the time spent in the futile application for review. When a man takes one remedy and fails in the process, he cannot be allowed to have the benefit of S. 14 of the Limitation Act to enable him to use another remedy, whatever the reason for the failure of yet a third remedy. (*Darling, S.M. and Bonford, J.M.*) RAM PRASAD PANDE v. JAI BAHADUR

PRASAD. I.L.E. 1938 All 192—1937 A.W.R. 1188—1937 A.L.J. 1308—173 I.C. 481—1938 A.L.R. 146—10 E.A. 483—A.I.R. 1938 All. 78.

—S. 14—Construction—Principle—Liberal construction.

The principle is well settled that S. 14 of the Limitation Act must be liberally construed, and if on the facts of a particular case the Court finds that the plaintiff was prosecuting in good faith another civil proceeding against the same defendant founded on the same cause of action, the time taken up in such proceeding should be excluded. (*Rangnekar and Wadia, J.J.*) MANEKLAL v. SHIVLAL.

40 Bom. L.R. 1169.
—S. 14—Discretion exercised by lower appellate Court—Interference by High Court

The High Court will not interfere with the discretion of the lower appellate Court under S. 14 of the Limitation Act when such discretion has not been exercised. (*Thomas, C.J., Zia-ul-Hasan, J.*) AGDFO PRASAD v. PEAREY LAL.
173 I.C. 648—1938 A.L.R. 184—1938 O.L.R. 133—1938 O.W.N. 257—10 B. & 227—A.I.R. 1938 Oudh 100 (S.B.).

—Ss 14 and 2—Failure of suit owing to negligence of plaintiff—Prosecution, if in good faith—Right to deduction of time

S. 14 of the Limitation Act is not intended to apply where the first suit has failed owing to the negligence and laches of the plaintiff. Where the plaintiff and his attorney were guilty of negligence in not having applied for leave to sue by reason of which the High Court was without jurisdiction to hear the case, it could not be said that the plaintiff was prosecuting that case in good faith within the definition given in S. 2 of the Act. (*Lort Williams and Jack, J.J.*) GHISULAL GANESHILAL v. GUMBHIRMULL.

A.I.R. 1938 Cal 377.

—S. 14—"Good faith"—Meaning of.
'Good faith' as used in S. 14 of the Limitation Act means 'exercise of due care and attention'. Where the circumstances are such as would justify either view as regards the value of the property, the plaintiff cannot be

1938 N.L.J. 107—A.I.R. 1938 Nag 300.
—S. 14—Indulgence under—When can be granted.

Indulgence should be granted under S. 14 of the Limitation Act only in cases where an error was an

LIMITATION ACT (1908), S. 14.

wrong Court on counsel's advice—If a ground for claiming benefit of S. 14.

Generally negligence on the part of counsel cannot be relied upon by the litigant in order to support a plea that he was prosecuting an application 'in good faith' though in wrong Court. Where a decree in the nature of a foreclosure decree was passed by an Additional Subordinate Judge, but the application for making it final was made to another of co ordinate jurisdiction, on the advice of counsel, it was held that it was a case of gross negligence and hence the applicant was not entitled to the benefit of S. 14 of the Limitation Act. (*Hamilton and Yorks, J.J.*) **RAM DUTTA v. MAHPAL SINGH.**

If a claim by a person is fully satisfied, either by an agreement or by a decree of a Court, and if that satisfaction is subsequently annulled by another decree of Court, a fresh cause of action would accrue in favour of the claimant, apart from the question, whether the claimant can avail himself of S. 14 of the Limitation Act to deduct the time taken in the prior suit and proceedings. (*Rangnekar and Wadia, J.J.*) **MANEKLAL v. SHIVLAL.** 40 Bom. L.R. 1169.

—S. 14—Time to be deducted under—Calculation of—Plaint ordered to be returned for presentation to

—Revision petition filed by plaintiff against order in claim case—Plaintiff's right to extension of time. See LIMITATION /

—S. 14 (1)

Court—Exclus

There is no a Court to ret... an application for... has been filed in a wrong Court. is filed before a Court which h receive it, such Court would be fail the application in exercise of its i. S. 151, C. P. Code. Where the for execution is filed on last day in good faith in a Court which from defect of unable to entertain it, and the applicatio by that Court for presentation to the pro the next day on which it is presented li holder to the proper Court, the application by limitation. (*Edgley, J.*) **DEBI PROSARNA v. INDRA NARAIN.** A.I.R. 1938 Cal. 701.

—S. 14 (2)—Exclusion of time—Prosecution of unnecessary applications.

LIMITATION ACT (1908), S. 17.

certain applications which are entirely unnecessary, it cannot be said that the applications were prosecuted with due diligence or in good faith and the time spent in the prosecution of such applications cannot be excluded. (*Roberts, C. J. and Dunkley, J.*) **HASANAR v. KANDAN CHETTYAR.** 177 I.C. 923=11 E.E. 183= A.I.R. 1938 Bang. 318.

—S. 15—Applicability—Decree declaring plaintiff in possession of lands as sole owner and ordering defendant not to deprive plaintiff of his possession or to obstruct plaintiff in taking crops and ordering defendant not to receive rents—If stay of suit for possession by defendant—Right to deduction of time for subsequent

the crops raised, and which orders the defendant not to accept or receive rents—If defendant is held to operate defendant or filing a suit when the plain...

junction or an order restraining the defendant from going to a Court of law and asserting his rights in possession of the property to which he may have been entitled. Such a decree cannot amount to an order staying the institution of a suit within the meaning of S. 15, as to entitle the defendant to the deduction of time under that section. (*a, J.J.*) **NARAYAN v. ...** 40 Bom L.R. 1134.

decree against several pending against one—exclude in execution ON ACT, ART. 182, 1938 P.W.N. 397. ly—Ward of Court aspect of trust property rds—Necessity—Period of notice—Right to deduct. See MADRAS COURT OF WARDS ACT, S. 49. 1938 M.W.N. 435.

the heir at law where the executor leaves a will, though the executor under the will declines to accept office. "Legal representative" would also include an heir. (*Pandurang Rao and Venkataramana Rao, J.J.*) **SIVA**

LIMITATION ACT (1908), S. 18.

holder fraudulently selling property not belonging to judgment-debtor—Suit by purchaser for refund of purchase-money—Decree-holder guilty of fraud subsequent to sale.

In execution of a simple money decree for arrears of rent, the landlord decree holder brought to sale the holding, describing it as the property of the judgment-debtor even though he was aware of vestige of interest in the property was judgment debtor on account of the tri holding by the judgment debtor prior to h only the decree-holder did this but he w rents for some years after the sale from the auction-purchaser. On proceeding to take actual possession of the holding, the auction purchaser was obstructed by the real owner. Thereupon he brought a suit for possession but it was dismissed on the ground that the sale

suit against the decree-holder for the refund of purchase-money had and received by him to the use of the plaintiff on failure of the consideration. It was contended

years, it was really an act of fraud on his part which kept the plaintiff out of his right to institute the suit within the proper period of limitation. The plaintiff was therefore entitled to the benefit of S. 18, and the suit as brought by him was not barred, even though Art. 62 of the Act was held applicable to it. (*Nasim Ali and B. K. Mukherjee, Jf.*) CHAITANYA DAS BANERJEE v. RANJIT PAL CHOWDHURY

I.L.B. (1938) 1 Cal. 512—67 O.L.J. 16—A.I.R. 1938 Cal. 263.

—S. 19—Acknowledgment—Essentials—Endorsement by debtor acknowledging correctness of account—Sufficiency

An acknowledgment for the purposes of S. 19, Limitation Act, need not necessarily contain a promise to pay, or amount to a promise to pay. The endorsement

the purposes of S. 19. (*Dhanle, J.*) RAMPRABHA

prior instrument—Sufficiency to keep alive debt.

The endorsement of cancellation on a prior promissory note at the time of execution of a new note for the amount due under the to a value alive the KONDAM

—S. 19—Admission of liability—Payment to account—If amounts to. Where a person puts his signature below a paid to account Rs 10 endorsed on the back of

LIMITATION ACT (1908), S. 19.

S. 19 as been at must ie docu (Base,

J.) RAMPRASAD JAGBANDHOO v. ANANDI BRINDAWAN RAWAT. 174 I.C. 374—III R.N. 377—A.I.R. 1938 Nag. 180.

—S. 19—Acknowledgment—Statement in liability admitting liability and providing for arrangement for satisfaction of liability.

An admission of liability coupled with a declaration

11-11-1921, the substance of which was that on that date, i.e., 11-11-1921, a sum exceeding Rs. 850 was due from the debtor to the creditor on settlement of accounts, that the debtor was attempting to discharge the debt to the extent of Rs. 850 by the sale of certain properties, but for the balance due in provision for discharge by

amounted to an admission 11-1921, required by law to constitute an acknowledgment, and that the position was not altered by the fact that the contemplated discharge proved ineffective. (*Varadachariar, J.*) RAMA-

sory note—If can amount to—If should be an instrument under S. 2(14) of the Stamp Act. See STAMP ACT, S. 35. 1938 N.L.J. 145

—S. 19—Acknowledgment addressed to dead person—Sufficiency.

An acknowledgment, duly signed, although it is addressed to a dead person will operate as a valid acknowledgment of a debt to save limitation under S. 19, Limitation Act (*Wort and Manohar Lal, Jf.*) AMRIT NARAYAN SINGH v. BALJNATH PANDEY, 174 I.C. 779—4 B.R. 480—10 B.P. 551—A.I.R. 1938 Pat. 180.

—S. 19—Acknowledgment of interest—Sufficiency as regards principal

An acknowledgment of interest due implies that there is some principal due upon which the interest is assessed,

1937 M.W.N. 1312, and be

falling under Sch. I, Art. 1 of the Stamp Act The latter must be written with the intention of supplying

—S. 19—Admission of liability—Payment to account—If amounts to.

Where a person puts his signature below a paid to account Rs 10 endorsed on the back of

LIMITATION ACT (1908), S. 19.

missory note which contained on the front a promise to pay Rs. 2,141 with interest, the words were held to mean that the debtor had not paid the debt in full and that he only intended to make an acknowledgment of his liability to pay. (*Roberts, C. J. and Braund, J.*) U TUN MAUNG v. L. AH CHOY.

—S. 19—Agent duly in charge of Court of Wards. WARDS ACT.

—S. 19—Applicability—Acknowledgment after period of limitation but during period excluded by Court of Wards Act—If can extend time.

S. 19 of the Limitation Act cannot apply to a knowledge made after expiry of period of limitation prescribed, but during the period excluded by S. 52 of the U. P. Court of Wards Act, and so such an acknowledgment cannot extend time. (*Bennet, A.C.J. Raghopal Singh and Ganga Nath, J.J.*) LAL SINGH.

175 I.O. 556—10 B.A.

1938 A.W.B. (H.C.) 1

1938 A.L.J. 252—A.I.L.

—S. 19—Basis of suit—A promise to pay—Consideration, if taken before Full Bench—If

been proved. As it is an agreement for consideration whether it is before expiry of limitation or even a suit on its basis cannot be held to be time-barred. Even if such point is newly taken before the Full Bench the question before the trial Judge and Single Bench

both the points is the same, viz., whether the suit is barred by limit
Din Mohammad
DAS.

is third person admitting equitable mortgage—If saves limitation—Letter giving address lien over properties pledged with equitable mortgage—If effective without registration—Registration Act, S. 49.

A letter written by the debtor (mortgagor) to a third person, in which he agrees to give him a lien over certain properties "now with the creditor-mortgagor as collateral security" (the title deeds having been deposited with the creditor as equitable mortgage previously), is an acknowledgment of the existence of the equitable

LIMITATION ACT (1908), S. 20.

mortgage which would save limitation under S. 19 of the Limitation Act. The fact that the letter is not registered does not make it inadmissible in evidence, because it is relied on only as evidence of a collateral fact, namely an acknowledgment by the debtor-mort-

—S. 19—Implied acknowledgment—Promissory note—Payment by debtor—Endorsement on subsequent date—If amounts to acknowledgment.

An acknowledgment within the meaning of S. 19 of

acknowledgment of the mortgage debt.

Held, that the appearance before the Registrar and execution of the sale deed only of execution of the matters set out in the note in writing before the Registrar which could be availed of. BALASUBRAMANIAN

CHETTY v. MANICKA CHETTIAR.

M.W.N. 113—A.L.B. 1938 Mad. 429.

xpl II—Agent only authorised—Hindu

—Separation of members—Acknowledgment of some members only—If binds other

IVER.

—Ss. 20 and 21—Applicability—Co-mortgagors—Payment by one—If saves limitation for suit on personal covenant as against the other—Joint contractors—If agents for one another.

For the purposes of Ss. 20 and 21 of the Limitation Act two joint contractors, such as co-mortgagors, are not agents one for the other, so far as a suit on the personal covenant is concerned. Although the mortgage itself may be kept alive by a payment made by one of the

LIMITATION ACT (1908), S. 20.

joint contractor is not the agent of the other or others so as to save limitation as
and *Manohar Lall, J.J.*)
LAL SAHU.

19 P.

A.I.R. 1938 Pat. 383.

—S. 20—Applicability—Hindu father—Promissory note by—Conversion of father and eldest son to Islam—Subsequent death of father—Payment and endorsement by junior sons—If saves limitation against eldest converted son.

Where a Hindu executes a promissory note and keeps it alive, and becomes a convert to Islam along with his eldest son and dies, and subsequently his younger sons make payments and endorse the same, the payments are by persons liable to pay the debt and under S. 20 of the Limitation Act limitation is saved not only against them but also against the eldest son though the latter has become a Mahomedan. His conversion to Islam cannot operate to rid him of his liability for the debt due under the promissory note of his father. (*Burn and Lakshmana Rao, J.J.*) SOMASUNDARA EDANGAPURANDAR v. NARASINHA CHARIAR.

—Ss. 20 and
Hindu manager—
Part payment and
other separated members
being

A person who as manager of a joint Hindu family executes a promissory note for a debt binding on the family cannot, after partition from the other coparceners, keep it alive as against the other members by making endorsements of part-payments on the note under S. 20 of the Limitation Act. Payments made after the partition are not payments made by the "manager for the time being" within the meaning of S. 21 (3) (d) of the Limitation Act. (*Madhavan Nair*

—S. 20—Applicability—Payment by debtor to creditor without any intimation as to whether it is for interest or principal—Creditor appropriating same for interest at his option—Debtor not aware of same and not

applies wholly towards interest due, there is neither a payment of interest as such nor a part payment of the principal which would save limitation under S. 20 of the Limitation Act. If the debtor is shown to have consented to such appropriation or to have been aware of it, it may be treated as a payment of interest as such. (*Broomfield and Macklin, J.J.*) HAYABU v. ISUR MUSA.
40 Bom L.R. 968—A.I.R. 1938 Bom 467

—S. 20—Applicability—Requirements—Payment of to be as part payment.

A payment to renew limitation under S. 20, must be a payment as part payment. If it is not so, there exists no element of acknowledgment of a balance to justify the extension of limitation. That a payment was in

Y. D., 1938—58

LIMITATION ACT (1908), S. 20.

As to payments made before 1st January, 1928, the significance because they are in the case of a payment not required to be evidenced so that the payment was in

fact towards interest and not left as a matter of doubt. As to payments made after 1st January, 1928, they are now placed on an equality. Therefore the words "as such" are material when the Court has to consider a payment made before 1st January, 1928, but they have no significance after the date mentioned. Where a judgment-debtor makes a part payment to the decree holder, such payment saves the entire debt from limitation. Any appropriation made by the decree-holder is immaterial. (*Courtney Terrell, C.J. and James, J.*) BANKANIDHI SANTRA v. GODIPATNA CO-OPERATIVE SOCIETY.
4 B.R. 496—10 B.P. 565—

A.I.R. 1938 Pat. 183.

—S. 20—Endorsement of payment after date of limitation but during holidays—If gives fresh start of limitation. See LIMITATION ACT, ss. 4 AND 20.

1938 A.W.R. (H.C.) 572.

—S. 20—Payment by debtor not specified—Part

made towards

by the creditor

previously made

judgment of the

payment is in the handwriting of the debtor, limitation is saved under S. 20 of the Limitation Act and it is not necessary under that section that the writing should specify that the amount was paid in part payment of the principal as such. (*Tek Chand, J.*) JAWAHIR SINGH v. GHULAM HASSAN.
40 P.L.E. 124—

A.I.R. 1938 Lah. 347

—S. 20—Payment by Official Receiver—If can revive limitation.

The Official Receiver is not an agent of the insolvent debtor on behalf of insolvent. S. 20 of the Limitation Act by the debtor. (*Norman.*)

AL

1937 A.M.L.J. 101

—S. 20—Payment towards decree—Application for execution within three years from date of payment—If within time.

of the principal

of the Limitation

for execution of

of the date of the

) HET RAM.

BODH RAJ v. AYA RAM TOLA RAM.

32 S.L.R. 415—1938 O.A. 323—47 L.W. 606—

40 P.L.R. 606—1938 M.W.N. 662—

42 P.W.N. 509—1938 A.L.J. 150—

1938 A.W.R. (P.C.) 45—1938 O.L.R. 98—

1938 A.L.R. 129—1938 P.W.N. 310—

10 B.P.C. 196—4 B.R. 308—

172 L.C. 999 (P.C.).

—S. 20—Payment under—If to be actual payment.

It is unnecessary under S. 20 that money should actually pass as a settlement of account may be as effectual as a real payment. A transaction whereby the parties agree that an amount previously due by the creditor the debtor shall be treated as amount paid by

LIMITATION ACT (1908), S. 20.

to the former, is in substance identical with a transaction where the debtor receives actual payment and pays the amount back to the creditor and gives a fresh period of limitation from such date. (*Dhale, J.*) *RAMPRA-BHA OJHA v. BISHUNATH OJHA.*

174 I.C. 585 = 4 B.R. 461 = 10 R.P. 525 =
A.I.R. 1938 Pat. 139.

—S. 20—"Payment"—What constitutes
liable to pay the debt—"Agent duly a
Meaning—Vendee of mortgaged property
pay part of consideration to mortgagee—
vendee—Sufficiency—Mortgagee acknowledged receipt
of payment without actual payment—Sufficiency.

One of the properties comprised in a mortgage deed
was agreed to be sold to one P for a certain amount and
it was stipulated that out of that amount P should pay

the execution of the sale by the
release deed was executed by the
recited that the mortgagee received
interest and that in consideration thereof he released his
mortgage right over the item sold. No money was
actually paid to the mortgagee on that day, the actual
payment being deferred to a later date by agreement
between the mortgagee and P. It was so paid subse-
quently.

Held, that the transaction amount
payment of interest by a person liable
within the meaning of S. 20 of the Lin
was "a person liable to pay the debt"
mortgagor's "agent duly authorised" and
the payment therefore saved limita
Sudha Rao and Abdur Rahman, J.J. *P.*
AYANGAR v. EKAMBARA MUDALIAR

1938 M.W.N. 397 =

A.I.R. 1938 Mad 579 = (1938)

—S. 20—Payments when save terms

The provisions of S. 20 of the L.
when they speak of a payment of interest or
principal, refer to the intention of the debtor in
making the payment; payment of interest means
that the debtor intended to pay towards interest;

LIMITATION ACT (1908), S. 20.

(*Stodart, J.*) *PATTABHIRAMAYYA v. KRISHNA RAO.*
47 L.W. 726 = 1938 M.W.N. 513 =
177 I.C. 759 = A.I.R. 1938 Mad. 683.

—S. 20 (1)—"Debt"—"Persons liable to pay the
debt"—Hindu joint family—Debt due by—Part payment
by one member after partition in family—If keeps alive
debt against others.

for the purposes of S. 20, "persons liable to pay the
debt" when the debt in question cannot be levied from
them personally, but is merely recoverable by sale of the
family property. Much less or they "persons liable to
reason of a partition the joint
and the debt is recoverable

PILLAI v. UTHANDIYA PILLAI.

L.L.R. 1938 Mad. 968 = 1938 M.W.N. 714 =

48 L.W. 251 = 178 I.C. 243 =

A.I.R. 1938 Mad. 774 = (1938) 2 M.L.J. 33.

—S. 20 (1) proviso—Payment appearing in hand-
writing of debtor—Same document, if can be taken as

—S. 20 (1) proviso—Payment of interest as such—
Extrinsic evidence of payment being towards interest—
Admissibility—Debtor executing pro-note for amount of

tion Act mean a definite space of time and is the
period prescribed by the Act, as provided in S. 3 of the
Act which refers to the First Schedule to the Act. It
does not include the extended period within which the
suit may be filed by reason of the Court being closed on
the last day of limitation as contemplated by S. 4 of
the Limitation Act. Where limitation for a suit on a
promissory note expires on Sunday, a payment of interest
made the next day cannot give a fresh starting point
though a suit filed on that date would be in time.

v. THEVAMMAL.

I.L.R. 1938 Mad. 1090 =

1938 M.W.N. 395 = 47 L.W. 520 = 177 I.C. 743 =

A.I.R. 1938 Mad. 601 = (1938) 1 M.L.J. 620.

—S. 20 (1) proviso—Payment by cheque—Effect of
Cheque written out by debtor—If evidence both of pay-
ment and acknowledgment of payment.

Under S. 20 of the Limitation Act, payment need not
be in cash. If a cheque is delivered to a payee by way
of payment and is received by him as such, the cheque
operates as a payment subject to a condition subsequent

LIMITATION ACT (1908), S. 20.

that if upon due presentation the cheque is not paid, the original debt revives. If the debtor himself writes out the cheque by which he pays, the cheque itself is evidence of the fact of payment as well as of an acknowledgment of the payment within the proviso to S. 20 of the Act. The proviso only requires that the acknowledgment must be of the payment; it is not necessary that it must also be stated that the payment is towards a parti-

A.I.R. 1938 Cal. 538.

—S. 20 (2)—Applicability—Mortgagor in pos-

mortgaged property as tenant of the mortgagee, the receipt of rent and profit by the mortgagee should be considered as payments of interest as such within the meaning of Sub S. (1) to S. 20 of the Limitation Act, (*Niamatullah, Ag C J. and Verma, J*) RAM KUNAR v. MAHPAL SINGH I L R. 1938 All. 218 =

1938 A.W.B. 27 (H.C.) = 1938 B.D. 230 =
1938 A.L.J. 18 = 1938 A.L.R. 257 = 171 I.O. 292 =
10 B.A. 566 = A.I.R. 1938 All. 188.

—R 21 "Agent duly authorized"—The term agent

NAUAYYA v. NAKASAYYA. 1938 M.W.N. 510 =
48 L.W. 268 = A.I.R. 1938 Mad. 853 =

—S. 21—Mahomedan mortgagee—Power to acknowledge debt MINOR. 1938 M.W.N. 671

—S. 21—Partnership—Acknowledgment or payment by one partner—Authority—If can be inferred

Direct evidence that one of several partners had authority to acknowledge liability or make payment so as to necessitate. CHAN

Acknowledgment Test. S. 2 to a case makes a case S. 21, stay th decree the ps joint family and saves time against father and sons (*Mitra, J.*) RAGGHI v NATHU LAL 1938 A.W.R. (H.C.) 666 = 1938 A.L.J. 973 = A.I.R. 1938 All. 638.

—S. 22 (1)—Applicability—Suit on mortgage—Vendee from mortgagor impleaded as party—Application after limitation to implead additional party alleged to be beneficial purchaser of properties—Competency.

LIMITATION ACT (1908), S. 26.

In a suit by a mortgagee for sale on his mortgage, the mortgagors and their vendee were originally impleaded as defendants. Subsequently, after the expiry of more than 12 years from the due date fixed for payment, the plaintiff applied to implead another person as a party defendant as it was brought in his notice that the said person was the real purchaser and that the vendee impleaded originally was only a benamidar for the party

Held, that the impleading of the alleged beneficial owner merely as a matter of caution would not by itself the Limitation Act, new, be a new party. Row, J.J.) SUBRA SRINIVASARAGHAVA

AYYANGAR 1938 M.W.N. 500 = 47 L.W. 665 = 177 I.O. 381 = 11 B.M.S.14 = A.I.R. 1938 Mad. 687.

—S. 23—A herse possession of mosque—Refusal to allow Muslims to pray—Continuing wrong. See LIMITATION ACT, SS. 3 AND 4 AND ART. 144.

40 P.L.R. 319 = A.I.R. 1938 Lah. 369 (F.B.) —S. 23—Applicability—Title suits brought after attachment under S. 146, Cr. P. Code—Limitation.

Suits for recovery of land brought more than six years after attachment under S. 146, Cr. P. Code, are not

—S. 24—Applicability—Suit in respect of negli

Ba U and Dunkley, J.J.) S.A.A. ANNAMALAI CHETTIAR v A FIRM OF ADVOCATES.

1938 Rang L.R. 457 = 176 I.O. 608 = 11 B.B. 61 = A.I.R. 1938 Rang. 258 (F.B.)

—S. 26—"As of right"—Meaning of

power to the capacity of impleading as a party defendant owner to make a grant The period of two years within which under the section a suit must be brought, if the section is to be availed of, should not, however, be confused with the period of one year mentioned in the explanation to the section. The explanation only defines the interruption contemplated by the section. An interruption within the meaning of the explanation for more than a year will operate to prevent the claimant

LIMITATION ACT (1908), S. 28.

from adding the period of his previous enjoyment of the right to any period of enjoyment after such interruption so as together to make up the requisite total of 20 years, but will not, by itself, suffice to nullify any right that may have been already acquired by an uninterrupted enjoyment, for the section

—**S. 28—Adverse possession for twelve years—If confers title.**

Per Young, C. J.—The operation of S. 28 of the Limitation Act perfects a title to the property in favour of the person in adverse possession after the period prescribed for recovery of possession has run. Twelve

40 F.L.R.

—**S. 28 and guardian—Alienation after majority to a prior alienor—Suit by alienor from guardian for possession—Right to decree—No suit by minor for setting**

an alienation made by his guardian in possession of the property alienated, the operation of S. 28, his right to that property quashed. It is not a case of a mere barred, but a case where the right to itself extinguished. If the alienor is subsequently dismissed by a purchaser from the minor after he attains majority, the alienor from the guardian is entitled to sue and obtain a decree for possession. A distinction must, however, be made between cases where the alienor from the guardian gets actual possession and those where the minor whose property is sold is never disturbed in his possession. In the latter cases where the minor's possession is not disturbed at all in spite of the guardian's alienation, the fact that the period under Art. 44 has expired does not disentitle the party in possession from successfully resisting the alienor's claim for possession. But the minor who has not been in possession and who has omitted to sue within the period limited by Art. 44 cannot resist the claim of the

injunction by landlord dismissed as time barred—Structures subsequently destroyed by fire—Transferee from tenant erecting fresh structure on same site—Landlord, if can bring fresh suit.

Where a tenant erected structures on land let out to him for horticultural purposes and the landlord's suit for a mandatory injunction against him was dismissed as barred by limitation on the date of the order, the transferee from the tenant erecting fresh structures on the same site can bring a fresh suit.

LIMITATION ACT (1908), Art. 11.

in the user of the land and the land was not again used for agricultural or horticultural purposes. (*Mukherjee, J.*) **BHUPENDRA NATH v. TRINAYANI DEBI.**

42 □ W.N. 758.

by—Suit for re-

household servant,

not apply to the remuneration of

goldsmith. Suit by a goldsmith

for recovering the price of his labour in making ornaments falls under Art. 56 and not under Art. 7. (*Niyogi, J.*) **LAXMINARAYAN NATHMAL v. SHRI RAM DANMAL MARWADI.** I.L.R. 1938 Nag. 592=

177 I.C. 315=11 B.N. 137=A.I.R. 1938 Nag. 286.

—**Art. 10—Time barred claim for pre-emption—**

by a purchaser of a share in

plead by way of defence his

has become barred by limita-

tion Act. The right of

pre-emption is an inchoate right and in order to be

under certificate under Public Demands Recovery Act—Objections to—Rejection—Suit by objector for declaration of possession—Limitation.

the issue of a sale proclamation by the

under the Public Demands Recovery

are preferred and an order is passed

rejecting his objections. Defendant No. 1 filed a certificate against defendant No. 4 and had it served on him on 30-6-1930, under S. 7 of the Bihar and Orissa Public Demands Recovery Act. Defendant No. 2 obtained a money decree against defendant No. 4, and others who formed a joint Mitakshara Hindu family and an execution of that decree attached and brought to sale certain properties. Defendant No. 1 laid claim to those properties on the basis of his certificate, and on 30-6-1930, it was ordered that the sale would be subject to the execution of the plaintiff's claim. Defendant No. 1 filed a claim against defendant No. 4 and had it served on him on 30-6-1930, under S. 7 of the Bihar and Orissa Public Demands Recovery Act. Defendant No. 2 obtained a money decree against defendant No. 4, and others who formed a joint Mitakshara Hindu family and an execution of that decree attached and brought to sale certain properties. Defendant No. 1 laid claim to those properties on the basis of his certificate, and on 30-6-1930, it was ordered that the sale would be subject to the execution of the plaintiff's claim. Defendant No. 1 filed a claim against defendant No. 4 and had it served on him on 30-6-1930, under S. 7 of the Bihar and Orissa Public Demands Recovery Act. Defendant No. 2 obtained a money decree against defendant No. 4, and others who formed a joint Mitakshara Hindu family and an execution of that decree attached and brought to sale certain properties. Defendant No. 1 laid claim to those properties on the basis of his certificate, and on 30-6-1930, it was ordered that the sale would be subject to the execution of the plaintiff's claim.

9-10 1933. Plaintiff then instituted a suit for a declaration of his title to and for confirmation of possession.

Held, that the suit fell under S. 25 of the Public Demands Recovery Act read with Art. 11 of the Limitation Act and having been brought more than one year after the date of the order (4-6-1931) was barred by limitation. (*Agarwala and Varma, JJ.*) **JAMUNA CHANDRA SINGH v. BIRAJ CHANDRA SINGH.** 177 I.C. 315=11 B.N. 137=A.I.R. 1938 Nag. 286.

LIMITATION ACT (1908), Art. 11.

R. 99, C. P. Code—Subsequent suit by him for partition of homestead brought more than one year after dis-

of his share is not barred by limitation, as the plaintiff

66 C.L.J. 537—A.I.R. 1938 Cal. 384.

—Art. 11 (A) and S. 14 (1)—Suit under O. 21, R. 103, C. P. Code—Revision petition filed by plaintiff against order in claim case—Limitation—Starting point—Plaintiff's right to extension of time under S. 14 (1)

The period of one year under Art. 11 (A) of the Limitation Act for a suit under O. 21, R. 103, C. P. Code, would run from the date of the order passed in the claim proceeding and not from the date of the order of the High Court rejecting a revision petition filed against that order. It would certainly be otherwise if the High Court interferes in revision with the order of the trial Court. Where the High Court rejects the revision petition, the plaintiff is not entitled under S. 14 (1) of the Limitation Act to the exclusion of the period during which he has been prosecuting the same.

—Applicability of Punjab Redemption of Mortgage Act—Subsequent civil suit—If barred.

Where an application for the Punjab Redemption of

not against the applicant and he need not, therefore, sue to set it aside. In such circumstances, Art. 14 of the Limitation Act is inapplicable. Accordingly a suit brought by the applicant for possession of the land by redemption more than one year after the date of the order of the Assistant Collector, is not barred by that article. (*Abdul Rashid, f.*) PRABHU MAL v. CHANDAN, 40 P.L.E. 245—A.I.R. 1938 Lah. 512.

LIMITATION ACT (1908), Art. 36.

—Art. 23—Starting point—Acquittal by trial Court—Application in revision against acquittal—Dis-Starting point out or revisional

as that time shall hen the prosecu- The words "when the plaintiff is acquitted"

cannot be divorced otherwise termina- other proceedings on is terminated not used in the subse- 'aradachariar and

GAM CHETTY, I.L.R. 1938 Mad. 675=

(1938) M.W.N. 209=47 L.W. 514=

174 I.C. 428=10 B.M. 699=

A.I.R. 1938 Mad. 349=(1938) 1 M.L.J. 314 (F.B.).

—Art. 29—Attachment and receipt of amount deposited in Court by receiver—Suit to recover it back—Limitation.

Where certain amount deposited in Court by the receiver appointed under O. 40, R. 1, C. P. Code, is attached and paid to a person a suit to recover back such amount is not governed by Art. 29, as the attachment is neither seizure within the meaning of Art. 29, nor wrongful. (*Addison and Din Mohammad, f.f.*) BALDEV RAJ v. MOOLCHAND AMOLAK RAM, 40 P.L.E. 685=176 I.C. 731=11 E.L. 229=

A.I.R. 1938 Lah. 493.

for declaration on of his decrees himself—Under-

or declaration that execution of his decrees ot to H. He also "or bidding H from at H undertook to it was proved that A. The suit was f and it was declared awhile the property brought a suit for

Held, that the suit was not for damages for non-

—Applicability—Person making false habitability of certain house and disswad-

Suit for damages—Limitation.

Where a person disswades other persons from taking a certain building on rent by making false statements as to habitability and safety of the building, the person so representing is liable in tort, the tort being analogous to slander of title and falling within the broader description of injurious falsehood. The action is one for misfeasance independent of contract and Art. 36 appli

LIMITATION ACT (1908), Art. 36.

such action. (*Stone, C.J. and Vivian Rose, J.*)
HARGOVIND DULLABH JIWAN v. KIKABHAI RAHIM-
TULLAH. I.L.R. (1938) Nag. 348=176 I.C. 257=
11 R.N. 45=A.I.R. 1938 Nag. 84.

—Art. 36—Applicability—Suit for damages in respect of a tort.

If a suit arises out of tort, or if it arises both from tort and contract and there is no waiver of the tort, it has to be brought within the two years allowed by Art. 36 of the Limitation Act. (*Collister, J.*) COURT OF WARDS, MUZAFFARNAGAR v. AJODHIA PRASAD.

I.L.R. (1938) All. 451=176 I.C. 141=11 R.A. 50=
1938 A.W.R. (H.C.) 184=1938 A.L.J. 328=
1938 A.L.R. 569=A.I.R. 1938 All. 305.

—Arts. 36 and 120—Applicability—Trustee failing to collect monies due to trust—Loss sustained by trust—Suit by succeeding trustee or co-trustee—Limitation—Starting point.

Art. 36 of the Limitation Act does not include wrongs committed by trustees in respect of trusts. Art. 120 and

good the loss sustained by the trust by reason of the defendant's omission to collect moneys due to the trust. The starting point of limitation under Art. 120 would depend upon the circumstances of the case. If a trustee of a public trust commits breach of trust, the right to sue arises when a trustee is appointed. If there are other trustees are themselves not liable, the limitation would running immediately the loss is occasioned. But if the co-trustees have also made themselves liable for the breach of trust, the position would be the same as in the case of defaulting sole trustee. In the case of a private trust the *cesti que trust* would ordinarily have the right to sue from the date of the breach of trust. (*Leach, C.J., Varadachariar and King, J.J.*) SUBBIAH THEVAR v. SAMIAPPA MUDALIAR. I.L.R. (1938) Mad. 586=

1938 M.W.N. 229=47 L.W. 344=174 I.C. 459=
10 R.M. 708=A.I.R. 1938 Mad. 353=
(1938) 1 M.L.J. 77.

—Art. 44—Applicability—Release by sub soil rights of minor mortgagees—Suit Limitation. See GUARDIAN AND WARD AND 30. A.I.R. 1938 Pat. 337.

—Art. 44—Applicability—Suit for possession by

alienated the whole or a portion of the property purchased by him before the suit, the donee from the purchaser cannot be bound by the adjudication in the suit by the ward against the original purchaser. If the ward seeks to dispossess the second donee, the question of the validity of the alienation must be re-tried, and Art. 44 requires that such a question should be investigated and

of minor—Transfer by guardian—Repudiation by minor

LIMITATION ACT (1908), Art. 58.

—Suit to set aside—If necessary—Suit by minor on the mortgage—Effect of—Right of assignee to sue on mortgage. See GUARDIAN AND WARDS ACT, S. 30. 1938 M.W.N. 802.

—Art. 44—Scope—If to be read with S. 44—Failure of minor to sue within time prescribed—Effect of. See LIMITATION ACT, S. 28 AND ART. 44. 43 Mys H.C.R. 197.

—Art. 48—Applicability—Suit against widow of late high priest of temple by present high priest—Claim to recover war bonds belonging to deity or their substitutes or their value—Limitation—High priest—If "trustee." See LIMITATION ACT, S. 10 AND ART. 44. 19 Pat.L.T. 367.

—Art. 49—Applicability—Pronotes left with another either as security or for safe custody—Suit in respect of. See LIMITATION ACT, ARTS. 145 AND 49. 1938 A.W.R. 59 (P.O.).

—Art. 52—Purchases on credit—Payments—Appropriation—Rule as to—When whole claim not

each case, where there are more debts than one payment is made without a specific appropriation, it is a question of fact to be found, as to which debt it was made. If it is proved that it was made on account of all the debts, then it would operate to save all

by plaintiff's employee for electric current supplied to defendant—Suit by plaintiff for balance not charged—Article applicable. See LIMITATION ACT, ARTS. 96 AND 52. 40 P.L.R. 143.

—Art. 56—Applicability—Suit for remuneration by goldsmith for work done. See LIMITATION ACT, ARTS. 7 AND 56. A.I.R. 1938 Nag. 286.

—Arts. 57 and 58—Applicability—Lender transferring to borrower cheque drawn by another person and endorsed in his favour.

under draws aer. It does the borrower person and endorsed in his favour by the payee. Such a suit comes within the ambit of Art. 57 only. (*Sir Shadi Lal.*)

1938 P.W.N. 466=40 Bom.L.R. 752=
A.I.R. 1938 P.O. 66=(1938) 1 M.L.J. 785 (P.C.).

—Art. 58—Payment of cheque—What amounts to. A cheque is paid under Art. 58 when it is cashed by the lender's bankers, for it is only then that the lender's money passes into the hands of the borrower and the loan is made by the former to the latter. The mere

172 I.C. 978=1938 A.W.R. 30 (P.O.)=

rt. 64.

definite sum of money
nt and which the law
he plaintiff, and is not
efendant is asked to
says when the person
entitled in just allow-
J.J.) VIDYA WANTI
I.B. 1938 Lah. 139.

Assignment of decrees
by insolvent prior to adjudication—Annulment of as-

annulled and as such was payable under
vincial Insolvency Act.
nt of dividend to the cre
ditor filed a suit for re-

t of annulment was to remit the party
is set aside to his
n against the credi
of the appointee,
osition of a trustee
where the proper
ack to the debtor,
r as regards the creditor's claim was
deposit cannot lose its character as
? *Dunkley, J.J.* DAW HNIT v
1938 Rang L.R. 468 =
A.I.R. 1938 Rang 335

applicability—Money deposited in
een depositor and another divid
in the two—Character of deposit—
recovery—Limitation—Starting

assigned to him, both before the annulment of the

annulled by
March, 1930,
recovery of
the decrees

and consequently any moneys collected by the appellant
at any time more than three years prior to the suit could
not be recovered, the claim thereto being barred under
Art. 62 (*King, J.*) SHANNUGAM CHETTIAR v.
OFFICIAL RECEIVER, WEST TANJORE
1938 M W N 290 = 47 L W 557 = 178 L C 448 =
A I R 1938 Mad 532 = (1938) 1 M L J 682.

—Art 64—"Account stated"—Essence of
The essence of an account stated is the fact that there
are cross items of account and that the parties mutually
and by treating the
discharging the items
in to agree that the
ment contained items
by the defendant
not remittances yearly
ce struck showing a
Below this there was
s correct" which was

and refusal Art 115 cannot apply
the claim can in no sense be one for
breach of a contract. (*Pandurang Row and Venu-
ramana Rao, J.J.*) RAMASWAMI CHETTIAR
KAM CHETTIAR. 1937 M W N.

47 L W. 118 = 176 I C. 617 = 11 R.
A I R. 1938 Mad 238 = (1938) 1 M L J 66.
—Art 60—Demand—If to be for entire payment.
The demand contemplated by Art. 60 is a demand
for the repayment of the whole amount of the deposit
due, and not a demand for partial payment (*Mosely
and Dunkley, J.J.*) DAW HNIT = ANAMALAI
CHETTIAR 1938 Rang L.R. 468 =
A.I.R. 1938 Rang. 335.

—Art. 60—Demand—Proof of debt
insolvency—If amounts to.
Where a banker with whom deposi
current account is adjudicated insolvent,
of debt and claim made in insolvency by the creditor =
not a demand within the meaning of Art. 60 (*Mosely
and Dunkley, J.J.*) DAW HNIT = ANAMALAI
CHETTIAR. 1938 Rang L.R. 468 =
A.I.R. 1938 Rang. 335.

to pay under S 25 (3), Contract Act, as there was no
express promise by the defendant to pay the balance.
(*S. K. Ghose and Patterson, J.J.*) SATIS CHANDRA v.
RAMPADA CHATTAPADHYA A I R. 1938 Cal 861.

—Art. 64—Account stated—Mere statement of
balance.
A mere statement of the balance which is due on a

NATH v CHAMELI I.L.R. (1938) All 741 =
1938 A.W.B. (H.C.) 517 = 1938 A.L.J 773 =
177 I C 815 = 1938 A.L.R. 781 = 11 R A 223 =
A.I.R. 1938 All. 604.
—Art. 64—Account stated—Requires.

LIMITATION ACT (1908), Art. 91.

A widow had an eight annas share in the property of her deceased husband, the other eight annas belonging to the brother of her husband. She executed a deed described as a deed of relinquishment whereby she conveyed her eight annas interest to her husband's brother. The husband's brother executed a mortgage of the 16 annas interest thus obtained by the deed. The property was sold in execution of the mortgage decree. The widow brought a suit for declaration that her title

LIMITATION ACT (1908), Art. 98.

insistute any suit to avoid the document. (*Addison and Din Mohammad, J.J.*) **JAMIAH DAWAT v. MOHAMMAD SHARIFF.** A.I.R. 1938 Lah. 869.

—Art. 91—*Plea of bar under—Onus—Suit to set aside deed brought about by undue influence.*

Where a suit is brought by a lady to set aside a deed executed by her by misrepresentation and undue influence of a person who stood in a fiduciary relation to her and was thus bound to safeguard her interest, the burden

not was immaterial. The suit, brought more than three years after she knew the fact entitling her to set aside deed, was barred (*Wort and Manohar Lal*). **GYAN PRAKASH DAS v. MT. DUKHAN KUAR.**

173 I.C. 479—4 B.E. 293—1937 P.W.N. 82
10 B.P. 416—19 Pat L.T. 362—A.I.R. 1938 Pat.

—Art. 91—*Applicability—Suit to avoid gift deed as having been executed under undue influence—Limitation—Starting point* See CONTRACT ACT, S. 16.

39 Bom.L.R. 1233.
—Arts 91 and 142—*Applicability of—Void and voidable instruments—Claims with reference to separable legal part.*

There is a wide difference between an instrument which is voidable and one which is void from the beginning. In the former the right under the contract continues until it is avoided and therefore restoration of property handed over in pursuance of it cannot be claimed until the instrument is avoided either by the act of parties or through the Court. In the latter no legal

A.I.R. 1938 Rang 284.
—Art. 91—*Suit to declare deed of gift invalid—*

governed by Art. 91 of the Limitation Act and the period is three years and starts from the time the plaintiff became aware of the true character of the deed and of the transaction which he had entered into. (*Ganga Nath, J.*) **IBRAR AHMAD v. KAMNI BEGAN.**

176 I.C. 874—1938 A.L.R. 677—
1938 A.W.B. H.O. 375—11 B.A. 151—
1938 A.L.J. 502—A.I.R. 1938 All 451.

—Art. 98—*Applicability—Suit for sale on mortgage—Property mistakenly described—Suit for rectification barred—Right to relief—Oral evidence as to correct property and intention of parties—Admissibility—Specific Relief Act, Ss. 33 and 34.*

It is open to the plaintiff or the defendant in a suit to

177 I.C. 6—11 B.N. 109—
A.I.R. 1938 Nag 335 (F.B.).

—Art. 91—*Person dedicating property for mosque reserving for himself perpetual connexion with it—Suit for cancellation of document—Limitation—Starting point.*

Where a person dedicating construction of a mosque, and a permanent mutawalli, reserving connexion with the mosque in deed, brings a suit for avoidance of his right to manage the affairs of the

(*King v. VENKAY*)

—Arts. 96 and 52—*Wrong bills sent by mistake by plaintiff's employee for electric current supplied to*

for less than the amount due, a suit by the plaintiff for

LIMITATION ACT (1908), Art. 98.

act : also the defalcated money was
sion ; nor was there anything else
could be said to represent it.

Held, that the suit against the
make good the loss occasioned by
of trust out of his general estate
would apply (*Bose and Puranik*
Bai v. SHRI DEO RADHA BALLABHJI

178 I.C. 57-11 E.N. 21-1
—Art. 98—Cause of action.

Article 98 does no more than ca
tee's liability for breach on to his
It does not contemplate any diffi
(*Bose and Puranik, J.J.*) SAHA—
DEO RADHA BALLABHJI. 178 I.C. 57-11 E.N. 21-1

A.L.R. 1938 Nag. 30
—Arts 109 and 120 — Applicability—Suit for

AUNG MYINT v. DAW MYA.

—Art. 109—Starting point
profits or date of accrual of ca
profits

The terms of Art. 109 of the Limitation Act are per

to recover those profits arose (*Beaumont, C.J. and*
Sen, J.) DULLABHBAI v. GULABHAI.
I.L.R. 1938 Bom. 107-173 I.C. 808-10 E.N. 382-
40 Bom. L.R. 100-A.L.R. 1938 Bom. 158

—Art. 113—Applicability—Agreement to finance
litigation—Date 'fixed'—What is—Date of decree—
Meaning

Statutes of limitation must be strictly construed

The question as to whether the first part of Art. 113 is
or is not applicable depends to a great extent on the
language of the agreement. An agreement between A

LIMITATION ACT (1908), Art. 115.

re than three
three years

not be the

Art. 113 as
decree which
As the decree,
and then to
unassailable, it
performance of
rt of Art. 113
in time (*Cold-*
PARSHAD v.
.. 1938 Lah. 23,
discussion under
—Article appli-

I.L.R. 1938 All. 664-1938 A.W.R. H.C. 365-
176 I.C. 523-11 R.A. 126-1938 A.L.R. 643-
1938 A.L.J. 661-A.I.R. 1938 All. 429.

governed by Art. 120 and not by Art. 115, Limitation
Act. The liability of the defendant does not arise out
him and the Municipality, but
imposed by the statute on the
to pay the fees assessed by the
The Municipality is autho
rized by S. 368 of the Act to recover such fees by dis-
traint or suit (*Agarwala, J.*) MAIHURA PRASAD v.
SPECIAL OFFICER IN CHARGE, GAYA MUNICIPALITY.
175 I.L.R. 86-4 B.R. 523-10 B.P. 579-
A.L.R. 1938 Pat. 192

—Art. 115—Applicability—Money deposited in

—Applicability—Suit for compensa-
Committee using another's land for

cattle fair for years

Where a Municipal Committee continues to hold a
cattle fair on another's land from year to year, an infer-

LIMITATION ACT (1908), Art. 115.

and *Din Mahomed, J.F.*) MUNICIPAL COMMITTEE,
AMRITSAR v. KANSHI RAM, 178 I.C. 49=

A.I.R. 1938 Lah. 267.

—Art. 115—Applicability—Suit for terminal tax.
See LIMITATION ACT, ARTS. 120

—Art. 115—Order for delivery of machinery delivered found to be of different make—All machinery delivered more than three years before suit—Part of engine delivered within three years—Suit for breach of contract—Limitation.

Certain company A informed the firm B that they wished to erect a weaving shed and asked them to send a complete specification for the same. Specifications containing three estimates for different machines were covered by a single letter which gave a total price of all the machinery and stated that one third of such total price should be paid in advance with the order. The order was placed and delivery taken, but it was found that some machinery was not of the same make as ordered. A suit was brought by company A against firm B for damages for breach of contract. Almost all the machinery including the subject matter of the suit was delivered more than three years before the date of the suit but a part of an engine was delivered within three years. The trial Court dismissed the suit as time-barred holding that the order was an order for separate pieces of machinery and time ran from delivery of each machine.

Held, Art. 115, applied, conclusively showed that single whole and the time b the last delivery. The su (*Dalip Singh and Skem, SPINNING AND WEAVING STRATTON & CO*

A.I.R. 1938 Lah. 277.

—Art. 116—Applicability—Mortgage by Hindu father for antecedent debts and for fresh cash advances—Suit against son after death of father—Limitation. See HINDU LAW—DEBTS. 40 Bom.L.R. 381.

—Art. 116—Mortgage bond—Claim to personal decree—Limitation.

LIMITATION ACT (1908), Art. 120.

—Arts. 120 and 132—Applicability—Mortgage of entire mukarrari rent payable to landlord by tenant under kabuliya in respect of lakhraj jagir, naqdi kasht land and manhunda rice—Suit to enforce—Limitation.

rent of Rs. 100 of June 1913 in

and manhunda rice," is a mortgage of the landlord's right together with the landlord's charge, and therefore a mortgage of an interest in immovable property, and a suit to enforce such a mortgage falls under Art. 132 of the Limitation Act. The mortgaged property cannot be said to be merely an actionable claim, and the suit cannot therefore be subject to the six years' rule of limitation under Art. 120, (*Courtney Terrell, C.J. and Menohar Lal, J.*) RAMZAN ALI v. LAL SINGH. 173 I.C. 64=4 B.R. 281 (1)=10 B.P. 466=18 Pat.L.T. 801=1937 P.W.N. 826=

A.I.R. 1938 Pat. 16.

—Art. 120—Applicability—Municipal license fee assessed under S. 180, Bihar and Orissa Municipal Act—Suit for—Limitation. See LIMITATION ACT, ARTS. 115 AND 120. A.I.R. 1938 Pat. 192.

—Art. 120—Applicability—Representative suit for declaring certain land as graveyard and for injunction directing defendants to remove buildings erected thereon. Where certain Mahomedan residents bring a suit on behalf of all the Mahomedan residents for a declaration

yard. (*Bhude, J.*) MAHOMED DIN v. MAHOMED DIN. 178 I.C. 125=A.I.R. 1938 Lah. 254.

—Art. 120—Applicability—Resulting trust—Money subscribed by large number of people for particular purpose and held by one of them with liability to pay interest—Trust or deposit—Purpose failing—Effect—Suit by subscriber for recovery of his share—

rights—Limitation.

A Brahmin died leaving behind him a widow and three daughters. The eldest daughter was married to a son of the late husband. The son of the late husband was named as the son of the late husband in the will. A suit to contest the will was filed by the son of the late husband. The suit was dismissed as time-barred as it was brought after the death of the late husband. (*Din Mohammad, J.F.*) M.T. SURTI. 40 F.L.R. 660=A.I.R.

that the funds are held by one of the subscribers who undertakes to pay interest on the funds would not be in-

AR. 1938 M.W.N. 310=47 L.W. 389=A.I.R. 1938 Mad 641=(1938) 1 M.L.J. 616.

was barred as it was brought after the death of the late husband. (*Din Mohammad, J.F.*) M.T. SURTI. 40 F.L.R. 660=A.I.R.

LIMITATION ACT (1908), Art. 129.**ABILITY OF BANKER.**

48 L.W. 577=

A.I.R. 1938 Mad. 999.

—Art. 120—Applicability—Suit for correction of record-of-rights. See B. T. ACT, S. 111-B AND LIMITATION ACT, ART. 120. 42 C.W.N. 96.

—Art. 120—Applicability—Suit for profits of immovable property against co-heir in possession. See LIMITATION ACT, ARTS. 109 AND 120—APPLICABILITY. A.I.R. 1938 Rang. 416.

Fresh attack on title—Suit brought within six years of last attack in time.

A.I.R. 1938 Cal 804.

—Art. 120—Declaratory suit—Cause of action—Plaintiff in possession

Proceedings for partition of village started in 1922. In the entered to the effect that the accordance with the land revenue

1936. The revenue courts under S. 117, Punjab Land Revenue Act, to the Civil Courts for the decision of the question of title. The plaintiff who had all along been in possession brought a suit within six years of the final order for declaration that the partition should have been made according to the revenue assessed on the holdings.

Held, that the final order for partition of 1932 threatened the possession of the plaintiff and thus gave him a fresh cause of action. The suit brought within six years of that date was within time. (*Addison and Din Mahomed, JJ.*) **DASONDHI KHAN v. JAN MOHAMMAD.** A.I.R. 1938 Lah 318

—Art. 120—Declaratory suit—Fresh invasion of

previous invasion is a distinction without a difference (*Bhida, J.* on difference between *Dalip Singh and Shemp, JJ.*) **RURA v BANTA** 40 P.L.R. 600=

A.I.R. 1938 Lah 227.

LIMITATION ACT (1908), Art. 120.

him as such is invalid is governed by Art. 120 and not by Art. 124 of the Limitation Act. Such a suit is therefore time barred, if not brought within six years from the date of the deed. (*S. K. Ghose and Patterson, JJ.*) **NIRMAL CHANDRA v. JYOTI PRASAD** 177 I.C. 898=11 R.O. 292=EN L.J. 230=

42 C.W.N. 1138=A.I.R. 1938 Cal. 709.

—Art. 120—Partition proceeding—Plaintiff's title to land denied—Plaintiff never in possession—Suit

were owners of land instituted in 1935, was clearly barred by time under Art. 120. (*Addison and Abdul*

action does not give rise to a fresh right, for instance, where property is attached, the procuring of the attachment is the wrongful denial and the cause of action

d, in such a case it seen a "continuing g point during the But from this it

and when he does to, it is with reference to the particular infringement he alleges that the limitation should be reckoned (*Venkataiah Rao and Abdur Rahman, JJ.*) **APPA RAO v SECRETARY OF STATE** 1938 M.W.N. 244=47 L.W. 438=

A.I.R. 1938 Mad 193=(1938) 2 M.L.J. 434.

—Art. 120—Suit by co-tenant for accounts—Defendant denying that plaintiff is co-tenant—Limitation.

There is nothing in Art. 120 warranting the view that where a defendant is a co-tenant of property with the plaintiff, he can bar the latter's subsisting right to ask him for accounts by merely denying that the plaintiff is

feudant is a co-tenant s a right to ask for continually as income

But this right is con- the account sought is

more than six years old (*Coldstream and Monroe, JJ.*) **VIDYA WANTI KAUR v SARDAR SHAHDEV SINGH.** A.I.R. 1938 Lah. 139.

—Art. 120—Suit to have order of withdrawal of

LIMITATION ACT (1908), Art. 120

terson, J.J.) BANWARI MUKUND DAS NANDI DALAL
v. AJIT KUMAR NANDI, 67 C.L.J. 320=

A.I.R. 1938 Cal. 874.

—Arts 120 and 115—
 Article applicable.

A suit for recovery of ter
 Art 120 and not by Art 11

Ag J.C. and Lobo, A.J.C.)

v. KALOONAL PAMOOMAL. 173 I.C. 678=
 10 R.S. 226=A.I.R. 1938 Sind 48.

centers The suit was not one for possession of any specific sum, as the amount recoverable could not be exactly known, for the person in possession was entitled to deduct his expenses of management even if the widows were in a position to state the exact moneys which came into the hands of the sur-
 parcener.

Held, that Art. 120 and not Arts. 48, 49 ar
 plied (*Coldstream and Monroe, J.J.) VIDYA*
KAUR v. SHAHDEV SINGH.

A.I.R. 1938 Lah 139

—Art. 123—Applicability—Annuity payable
 under express terms of will and descendible in male line

The plaintiff in such a suit can recover such arrears of annuity as are not paid within 12 years of the date of action. (*Manohar Lall and Chatterji, J.J.*)

—Art. 123—Applicability—Claim of profits in
 movable property of deceased.

Art. 123 does not apply to the claims of profits in the estate of a deceased in respect of movable property.

(*Roberts, C. J. and Sha,*
DAW MYA. 178 I.C.

—Art. 125—Applie
 proprietary body of till
 widow void.

The word 'reversioner' should not be imported into Art. 125. Art. 125 is not restricted sioners. A suit by certain members of body of the village to declare that an

LIMITATION ACT (1908), Art. 132.

Where a portion of the mortgaged property is acquir-
 ed under the Land Acquisition Act and the mortgagor
 withdraws the compensation money, a suit filed by the

the withdrawal of the compensation money, but the non-
 payment of the mortgage debt. (*Iqbal Ahmad,*
Harris and Basra, J.J.) GIRDHARLAL v. ALAY
HASAN MUSANT

1938 A.L.

—Art. 132—Covende paying off mortgage in
 overt sale—Right to a charge—Limitation for its en-
 forcement.

Where a payment has been made by an overpay-
 ment is made. The right to enforce the charge as

against the co vendee accrues on the date of payment
 and the article applicable to such a claim is Art. 132 of
 the Limitation Act. (*Yorke, J.) BRIJ BHUKHAN v.*
MURRAY & CO. 1938 J. 200

security is ample, to stand by his investment the full
 term of the mortgage. If the mortgagee accepts pay-
 ments of overdue instalments which are tendered to him

A.I.R. 1938 Mad. 836=(1938) 2 M.L.J. 251.

—Art. 132—Mortgage bond containing default
 clause—Money, when becomes due.

The fact that the mortgage bond contains a clause that the
 of a default
 the less due
 (*Biswas, J.)*
 MAJID.

68 C.L.J. 109=11 C.W.N. 38.

—Art. 132 and 130—Suit on mortgage—Step-
 would become payable
 years—Default commit-
 forest—Foreclosure

gator withdrawing compensation money—Suit by mort-
 gagee to enforce security—Starting point.

mortgage amount by sale of the property mortgaged.
 The lower Courts held that although Art. 132 of the

LIMITATION ACT (1908), Art. 134.

Limitation Act applied, the clause relating to default revived on 28th December, 1921, when a bond for the payment of interest was executed and consequently the money became due not on the date when the bond was executed but on the expiry of three years from that date. The suit was accordingly decreed.

Held, that S. 20 of the Limitation Act provided for the point that a fresh period of computation from the time when the debt became due and that being so, no question of time by a period of three years as provided in the case of original default, arose in the case. Default did take place during the first three years and the cause of action arose on the 14th April 1913. Subsequent payment of interest merely gave the mortgagee a fresh start but the *terminus a quo* could not be provided in the section itself. had only twelve years from the 28th December, 1921, within which the suit was, therefore, time barred.

BHAGAT RAM v. RALLA RAM

A I R 1938 Lah. 570

—**Art. 134—Nature and scope of—Onus of proving facts relevant to applicability of article—Usufructuary mortgage—Subsequent sale by mortgagor—Mortgagor's representatives, mortgaging same property along with that of his own—Suit by vendor from mortgagor—Art. 134, if applies.**

A close perusal of Art. 134 of the Limitation Act would show that it was brought into existence with the object of enabling the filing of suits for possession of properties primarily mortgaged and subsequently trans-

ferred to a third party who wishes to claim the benefit of an abridged period of limitation. If a mortgagor mortgaged his property and subsequently sold it to a third person, the mortgagor's representatives, mortgaged the same property, that of his other properties to a different person.

—**Art. 134 A—Applicability—Suit by Hindu idol for injunction alleging transfer to defendant by previous mortgagor**

Held, further, that if however B filed a suit against A, no period of limitation would run against A in his defence. (*Addison, C. J. and Din Mahomed, J.*) **THAKARJI MAHARAJ v. KHUSHI RAM.**

Plaintiff seeking to set aside transfer by previous Mahant in favour of defendant—Limitation—Starting point—Onus.

LIMITATION ACT (1908), Art. 137.

Where in a suit on behalf of an idol for a permanent injunction restraining the defendant from dispossessing the plaintiff from a certain land the substantial relief claimed by the plaintiff is to set aside a transfer of the land made by a previous mahant in favour of the defendant.

stage of the case the plaintiff has ever fixed any date on which he alleges that he came to know of the transfer to the defendant, the suit must fail on that account (*Abdul Rashid, J.*) **THAKARJI MAHARAJ v. KHUSHI RAM.**

40 P.L.R. 184—A I.R. 1938 Lah. 470.

after the mortgage, the cause of action for a suit for possession accrues in that year. The fact that interest was paid and accepted by the mortgagor in certain subsequent years cannot by itself be held to be sufficient to show that the default was condoned and the parties were restored to their original position. (*Bhade, J.*) **GAJJAN V. KISHORI LAL.**

40 P.L.R. 48.

—**Art. 135—Suit by mortgagor for possession as owner—Starting point—Bengal Regulation XVII of 1806.**

A suit by a mortgagor without possession for possession accrues on the basis of owner's right in twelve years of Bengal Regulation XVII of 1806. (*AHSAN ELAHI*) **40 P.L.R. 798—A I.R. 1938 Lah. 809**

Limitation Act, the starting point when the vendor is first in possession and in possession of the property, the starting point is the date of the sale and the date of the sale.

CHARAN

Cal. 790.

Decree in

Code of

of writ

if posses-

livered—

delivered

and possession by respondent originated out of disposssession subsequent thereto—Defendant alleging possession from date prior to suit under O. 21, R. 103—Fresh limitation. See **19 Pat.L. 250.**

for possession, by mortgagor on payment of entire price—Article applic-

Where after a Court auction of the share of one of four co mortgagors, the remaining co mortgagors redeemed the property, and after once again mortgaging and redeeming it, finally sold the entire property and were sued for possession of the property, the court held that it was not possible to apply Art. 137 to the case of a person who steps into the shoes of a co owner when co mortgagors have redeemed his share of the property.

LIMITATION ACT (1908), Art. 138.

from a mortgagee. The co-mortgagors on redeeming the property and obtaining possession, hold it adversely to the non-redeem. Although they dealt with the property as was not until they sold the whole including the share of that other person, that they exercised those of that other person. That of representative should bring his suit the date of sale according to Art. 144, who has redeemed the whole mortgage does not become a mortgagee of the share of his non-redeeming mortga-

LIMITATION ACT (1908), Art. 142.

Art. 138 of the Limitation Act does not apply to a

67 C.L.J. 294 = A.I.R. 1938 Cal. 790.

47 L.W. 286.

—Art. 138—Cause of

for sale—Purchase by mortga

of delivery of possession—Mortgagor and lessee under him continuing in possession—Mortgagee-purchaser selling rights to another—Suit by latter for possession—Limitation—Starting point—Proof of substituting title and possession within 12 years—Necessity.

On 22-9-1890, the ancestors of the defendants first-party executed a mortgage bond in favour of G for

46 L.W. 848 = A.I.R. 1938 Mad. 73.

—Art. 141—Applicability—Musi right—Right to sue for possession—If passes on to heirs.

Musi rights constitute immovable property. By reason of possession of those rights by defendants, under Art. 141 of the Limitation Act, it is incumbent on a

to sue for pos-
the last widow.
his death but
O MAL v. GOPI
8 A.M.L.J. 63

Rs. 175-50
was brought a
of Rs. 17,000

—Art. 141—Starting point—Successive female holders—Time—When begins to run—Death of last female holder—Suit within 12 years of—If in time.

ultimately brought the property to sale on 3. The sons of the mortgagee purchased the the sale for a sum of Rs. 40,966, which amount due under the mortgage decree. The sons of G however, did not get delivery of possession, and the mortgagors judgment-debtors continued in possession. On 22-5-1926, the heirs of the execution purchasers sold

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possession was delivered in execution on 8-10-1927. Plaintiff again failed to get possession of the lands in suit as well as the other lands, and on 12-11-1929, he commenced the present action for a partition of the lands.

Held, (1) that the suit was
tion in the guise of a suit for a p
tiff must therefore prove his sub
sion within 12 years. (2) that

suit for ejectment of the trespasser or the lessee (even if the lease be regarded as unauthorised) within 12 years of the date of the cause of action, the suit was hopelessly barred by limitation. (Manohar Lall and Chatterji, J.J.) RAMASRAY PRASAD CHOUDHARY v. C. G. ATKINS. 175 I.O. 279 = 1938 P.W.N. 177 = 4 B.E. 565 = 10 R.P. 597 = 19 Pat L.T. 95 = A.I.R. 1938 Pat. 189.

—Art. 138—Inapplicability—Judgment debtor not in possession at date of sale.**—Art. 144—Applicability—Duration of proof.**

Where the plaintiff's case was that he was in possession till a particular date and that he was driven out of possession on that date, there can be no doubt that Art. 142 applies to the case. In such a case although

K. L. Sinner, J.J.) KAMENDRA PRASAD BASU v. BARADA PRASAD BASU. 88 C.L.J. 359 = 175 I.C. 247 = 10 R.C. 777 = A.I.R. 1938 Cal. 208.

not come under Art. 142 and the residuary Art. 144 is the one that would apply. The word 'dispossession' imports, ouster, a driving out from possession against the will of the person in actual possession. The word 'discontinuance' implies a voluntary act an abandonment of possession followed by the actual possession of another. An intention to abandon is necessary and it must be either proved or admitted and cannot be assumed. (Boss, J.) MAHERHAN v. YUSUFKHAH. 1938 N.L.J. 418.

LIMITATION ACT (1908), Art. 142.

—Art. 142—Applicability—Parties to suit co-sharers—Plaintiff alleging that he was in possession of certain property and was dispossessed by defendants.

Where the parties to a suit are co-sharers and the plaintiff comes to the Court with an allegation that he was in possession of certain property and was dispossessed by the defendants, the case is governed by Art. 142 and it is necessary for the plaintiff to prove his possession within 12 years.

When he has been in possession for 12 years and pleads by way of defence that he cannot be held to be holding possession of it in dispute on behalf of the plaintiff and cannot be held to have been even in

possession—Adverse possession

Then possession, referred to in Art. 142, is a forcible

however, a suit is based on title and an alleged permissive occupancy, Art 144 applies. It is decided fairly on the question of Long and uninterrupted possession rent or term or conditions, in the jagirdars, evidenced by permanent temporary hutments, constitutes the full sense of that word (*Datta, ARAB JHANGLU v. PANJAL SHAH*).

—Arts. 142 and 144—Applicability on possession and dispossession—Onus of proof—Defendant—When possession

Arts. 142 and 144 apply to it

must allege prior possession and dispossession by the defendant within 12 years. The burden of proof is on

tion in the plaint that the plaintiff had been in possession and has been dispossessed. It applies when the suit is based on the ground that the plaintiff is the owner of the property and the defendant is a trespasser having no right to remain in possession.

Quære.—Whether the fact of several but independent trespassers can defeat the owner's title although he himself has been in possession for only a few days before the date? (*Ranga KRISHNA*).

40 Bom L.R.

—Art. 142—Burden

ACT, ART. 142—APPLICABILITY

66 C.L.J.

Y. D. 1938—60

LIMITATION ACT (1908), Art. 142.

—Art. 142—Possession—Proof—Waste land—Nature or possession—Absence of specific acts of possession—Effect—Land leased for cultivation—Lessee cultivating bulk of area—Small portion remaining waste but trespassed upon and reclaimed by others—Suit by lessee for possession—Limitation—Proof of possession—*Chota Nagpur Tenancy Act, S. 64—Applicability.*

The plaintiff obtained from the landlord a lease of a

over possession that the defendants by their acts of acquired special rights by converting within the meaning of Ss 64 and appur Tenancy Act. It was found that neither the plaintiffs nor the defendants proved any specific acts of possession over the plots up to the

area of required to be a rare yard bulk of the possession Limita-

tion Act, in the absence of specific acts of adverse pos-

is treated as applying to acts of trespass on the committed by the defendants on land which part of the holding of occupancy raiyats in the position of the defendants, (3) to regard an occupancy raiyat as a landlord within the meaning of S. 64 of the

a right to hold it for the purpose of cultivation, notwithstanding that they might not have actually cultivated the whole of it. (*Courtney Terrell, C.J. and James, J.*) *CHANDRA MOHAN SINGH v. BUTU MIAN.*

17 Pat. 210 = 175 I.C. 165 = 4 B.P. 537 =

10 B.P. 588 = 1938 P.W.N. 194 =

11 Pat.L.T. 133 = A.L.R. 1938 Pat. 222.

LIMITATION ACT (1908), Art. 142.

MANZUR ALI KHAN v. PETESHWARI PRASAD SINGH.
177 I.C. 119-11 B.O. 13=

1931

—Arts.

—Alienation by trustee—Suit for recovery of possession
—Defendants found not to be tenants—Limitation
applicable—Adverse possession, when commences.

Where a trustee or manager of a religious endowment grants a tenancy of property belonging to the endowment, the alienation is alienor's tenure of office, and the alienation commences under Art. 144 of the Limitation Act only from the cessation of office of the alienating

LIMITATION ACT (1908), Art. 144.

v. RANG NATH TIWARI. 1938 A.W.R. (B.E.) 363=
1938 E. D. 602.

40 Bom L.R. 166.

—Art. 144—Applicability—Suit for possession under a lease. See LIMITATION ACT, ARTS 113 AND 144. 1938 A.L.J. 561.

ARTS. 137, 144 AND 148.

176 I.C. 923-A.I.E. 1938 Rang. 65.

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and the policy behind the statutes of limitation be gravely disturbed. Hence, if a trustee takes property which he honestly believes to be his own but which on a true construction of the deed of

had not proved his possession within the statutory period. (P.)
ALAM KHA'

A.I. : :

—Art

—Alienation by trustee of trust property as own property—Possession of alienee—If adverse from start.

A trustee of a choultry alienated property belonging to the choultry as his own. He did not purport to pass title as manager of the choultry

—Art. 144—Sarva nam land—Alienation by holder—Suit by successor to set aside—Limitation—Starting point.

A suit to set aside an alienation of sarva nam property brought with-
out alienating inamdar,
the death of the
RAMCHANDRA v.
11 B.B. 38=
40 Bom L.R. 400-A.I.E. 1938 Bam. 331.

A.I.E. 1938 Mad. 60.

—Art. 144—Applicability—Alien

—Subsequent alienation by alien against second alienee—Limitation.
ACT, ART. 44.

—Art 144—Applicability and scope—Plea of adverse possession of immovable property—Plea of adverse possession.

It is clear from the position in which and from the words used in that art residuary article in respect of all suits immovable property to which no other rule applies. Where the plaintiff in possession of immovable property and the defendant in adverse possession, the suit falls under Art. 144 and Wadia, J.J.) NARAYAN GOUDA. 403

—Art. 144—Applicability—Pro Agra Tenancy Act.

Art. 144 of the Limitation Act does not apply to proceedings under the Agra Tenancy Act, the 1st schedule of the Act prescribed Act which has not been applied to it because it has its own schedule dealing (Darling, S. M. and Bomford, J. M.)

(Wadia, J.J.)
om L.R. 1131.
id and vada.

LIMITATION ACT (1908), Art. 144.

Adverse possession of an alienance dates from the moment the alienance is without lawful title. That time is, in the case of a void transfer, the date of the transfer, in the case of a voidable transfer, the date of the avoidance and in the case of the transfer effective for a

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Art 144—Suit by auction purchaser for possession within 12 years—Previous possession by defendant—

J.) UCHMATAN v. RAJENDRA NATH SANJAL.
67 C.L.J. 115 = A.I.R. 1938 Cal 689.

—Arts 145 and 49—Applicability—Promises left with another either as security or for safe custody—Suit in respect of

Where certain promissory notes remain with defendant having been left by the plaintiff as security or at

1938 P.W.N. 438 = A.I.R. 1938 P.C. 110 (P.C.)

—Art 148—Applicability—Suit for possession, by purchaser from non-redeeming co-mortgagor on payment of his share of amount due. See LIMITATION ACT, ARTS 137, 144 AND 148
176 I.C. 923 =
A.I.R. 1938 Rang 65

RAV.
1938 N.L.J. 183.

—Art. 164—Knowledge proof.

Where an application to set aside is made more than 30 days after the decree is made on the defendant the same within 30 days of the

The onus cannot be shifted by the bare denial of knowledge made by the defendant. (Potterson, J.) BENGAL COAL CO., LTD. v. BAUL CHANDRA MUKHERJEE.
177 I.C. 1003 = A.I.R. 1938 Cal 535

—Arts 166-181—Applicability—Application by a party under S. 47, C. P. Code, to declare a sale a nullity.

the Limitation Act (Nasim Ali and Mukherjee, J.J.)

LIMITATION ACT (1908), Art. 181.

NIRODE KALI ROY CHOUDHURY v. RAI HARENDRA NATH. I.L.R. (1938) 1 Cal. 280 = 178 I.C. 540 = 42 C.W.N. 87 = A.I.R. 1938 Cal. 113.

—Art. 166—Applicability—If restricted to applications under O. 21, Rr. 72 and 89 to 91.

The applicability of Art. 166, Limitation Act, is very wide, and there is no ground for holding that it is restricted to applications under O. 21, Rr. 72 and 89 to 91, C. P. Code. It applies to all applications under S. 47 of the Code (Grner, J.) MAROTTI v. KISAN-LAL. 1938 N.L.J. 389 = A.I.R. 1938 Nag. 558.

Collector's sale.
execution sale by the
30 days of the date
the bid (Greenfield,
1938 N.L.J. 10,
on under O. 21, R.
ng point. See C. P.
42 C.W.N. 478.

CODE, O. 21, R. 90.

The Limitation Act does not apply to proceedings under the Companies Act, when a member against whom an order of cancellation, it substituted on Act. tives is on the fly falls J. and

James, J.) SUMITRA KUMAR v. SHITAMARHI SUGAR WORKS, LTD. 173 I.C. 898 (1) = 10 B.P. 464 (1) = 4 B.E. 352 = 19 Pat. L.T. 214 = A.I.R. 1938 Pat. 287.

—Art 181—Applicability—Application by a party under S. 47, C. P. Code, to declare a sale a nullity. See LIMITATION ACT, ARTS. 166 AND 181.

for restitution—Limitation—Starting point.

lower appellate court accepting the appeal. An unsuccessful attempt by the other party to get that decree reserved in further appeal cannot give a fresh start for the purposes of limitation so far as the applicant for restitution is concerned. (Addison and Abdul Rashid, J.J.) THE PUNJAB NATIONAL BANK LTD., DELHI v. NANHE MAL JANKI DAS. I.L.R. 1938 Lah. 571.

—Art. 181—Applicability—Application under S. 144—Tenant ejected by landlord but restored to possession in appeal or revision—Application for mesne profits for period of dispossession—Starting point of limitation.

An application under S. 144, C. P. Code, is an application in execution, and is governed for

LIMITATION ACT (1908), Art. 142.

MANZUR ALI KHAN v. PETESHWARI PRASAD SINGH.

1938 A.

—Arts. 142.

—*Alienation by trustee—Suit for recovery of possession*
 —*Defendants found not to be tenants—Limitation applicable—Adverse possession, when commences.*

Where a trustee or manager of a religious endowment grants a tenancy of property in excess of his powers, the alienor's tenure of office, possession commences under Act only from the cessation of trustee. But where the trust is by way of sale purports to be as his own, his act amounts to a repudiation of the trust and the possession of the vendee will be adverse from the date of the alienation. Where in a

LIMITATION ACT (1908), Art. 144.

v. RANG NATH TIWARI. 1938 A.W.B. (B.R.) 363=

40 Bom L.R. 166.
 —Art. 144—Applicability—Suit for possession under a lease. See LIMITATION ACT, ARTS. 113 AND 144. 1938 A.L.J. 561.

144. 40 P.L.R. 319=A.I.R. 1938 Lah. 369 (F.B.).

—Art. 144—*Computation—Trustee alienating property honestly believing it to be his own—Property*

period. (P.)
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A.I.R. 1938 Lah. 369
 d—*Alienation by trustee—Limitation—*

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40 Bom L.R. 400=A.I.R. 1938 Bom. 351.

—Art. 144—*Applicability and possession of immovable property—Plea of adverse possession—new cause of action.*

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 GOUDA.

—Art. 144—*Applicability—Agra Tenancy Act.*

Art. 144 of the Limitation Act does not apply to the proceedings under the Agra Tenancy Act, as it comes in the 1st schedule of the Act prescribed Act which has not been applied to it because it has its own schedule dealing (Darling, S. M. and Bomford, J. M.)

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Wadia, J.J.)
40 Bom L.R. 1134.
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LIMITATION ACT (1908), Art. 141

Adverse possession of an alienee dates from the moment the alienee is without lawful title. That time is, in the case of a void transfer, the date of the transfer, in the case of a voidable transfer, the date of the avoidance and in the case of the transfer effective for a period (whether because of estoppel or otherwise), the date of the termination of the period (*Ramesam and Sene, ff.*) VENKATASUBRAMANIA AYYAR & SIVA-

LIMITATION ACT (1908), Art. 181.

NIRODE KAI
NATH.

—Art.

reasons under

The applicability of Art. 166, Limitation Act, is very wide, and there is no ground for holding that it is restricted to applications under O. 21, Rr. 72 and 89 to

dant, having been left by the plaintiff as security or at

the Companies Act, when a member against whom an of con-
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he liability of the legal representatives is
160 of the Companies Act and on the
member the liability automatically falls
entatives. (*Courtesy Terrill, C.J.* and

JMITRA KUER v. SITAMARHI SUGAR

173 I.C. 898 (1) = 10 B.P. 464 (1) =

4 B.L. 352 = 18 Pat.L.T. 214 =

A.I.R. 1938 Pat 287,

—Art. 181—Applicability—Application by a party
under S. 47, C. P. Code, to declare a sale a nullity. See

purchaser from non redeeming co-mortgagor on payment
of his share of amount due See LIMITATION ACT,
ARTS 137, 144 AND 148 176 I.C. 923 =

A.L.R. 1938 Rang 65

ledge in such a case time can be extended under S. 5 of
the Limitation Act. (*Nyaya, ff.*) BHIKAJI v. SANBHURAM,
1938 N.L.J. 183

—Art. 164—Knowledge
proof

Where an application to
is made more than 30 days
the onus is on the defendant
the same within 30 days of his knowledge of the decree
The onus cannot be shifted by the bare denial of know-
ledge made by the defendant (*Potterson, ff.*) BENGAL
COAL CO., LTD. = BAUL CHANDRA MUKHERJI.

—Arts
party under

47, C. P. Code, to have it
setting it aside for safety
ties, the proper article is Art. 181 and not Art. 166 of
the Limitation Act (*Nasim Ali and Mukherjee, ff.*)

40 F.L.R. 692 = A.I.R. 1938 Lah. 456.

—Arts. 181 and 182—Applicability—Applications
for restitution—Limitation—Starting point.

under Art. 181 should be counted from the decree of the
lower appellate court accepting the appeal. An unsuc-
cessful attempt by the other party to get that decree
reserved in further appeal cannot give a fresh start.

the sale is v. NANHE MAL JANKI DAS. I.L.R. 1938 Lah. 571.

—Art. 181—Applicability—Application under
ord but restored to pos-
Application for memo-
tion—Starting point of

An application under S. 143 C. P. Code, is not an
application in execution,
ied for purposes of

LIMITATION ACT (1908), Art. 181.

Limitation by Art. 181 of the Limitation Act, the right to apply, in the case of a person who is ejected from possession and subsequently restored or revision, for recovery of his disposssession, accrues been restored to him in purs. order of ejection in appeal can therefore be made at any time within three years after the date of restoration of possession. (*Darling, S.M. and Romford, J.M.*) **SURYAPAL SINGH v. BIJAI RAN.** 1938 A.W.R. (B.R.) 113= 1938 R.D. 182.

—Arts 181 and 182—Applicability—Decree for possession on payment of money in future—Execution—Limitation for execution.

Art 182 of the Limitation Act has no application to the execution of a decree for possession of immovable property conditional on the payment of a sum of money on a future date. Art. 181 is the article applicable to an application for execution of such a decree; and time begins to run from the date of the decree or at any rate on the date fixed for payment of the amount. (*Beaumont, C.J. and Vastoudew, J.*) **GOPAL SATTU DNYANU MARUTI.** I.L.R. 1938 Bom. 649 177 I.C. 499=11 E.R. 96= 40 Bom.L.R. 512=A.I.R. 1938 Bom. 367.

—Arts 181 and 182—Application for a decree in High Court—App. Limitation

An application for a decree in the High Court, under Code, is governed by Art. 181 of the Limitation Act and not by Art. 183. It is not the limitation applicable to an application for a decree. (*Engineer, J.*) **JESINGLAL KALIDAS v. GANGADHAR MAHADHO.** I.L.R. 1938 Bom. 273= 177 I.C. 470=11 E.R. 82=40 Bom.L.R. 507= A.I.R. 1938 Bom. 354

—Art. 181—Compromise instalment decree in the form of a preliminary foreclosure decree—Provision for application for final decree in case of default in the payment of any instalment—Starting point for application for final decree.

Where a compromise decree in the form of a preliminary foreclosure decree is made, the provision for application for final decree in case of default in the payment of any instalment, the starting point for application for final decree is the date of the compromise decree. (*Engineer, J.*) **KANWAR MUNSII LAI.** A.I.R. 1938 Lah. 695.

—Art. 181—Obstacle to execution—Removal by order of competent Court—Limitation for execution—Starting point.

Where there is an obstacle to the execution proceedings, for instance, possession of the property by a third party, as soon as that obstacle is swept away by a Court of competent jurisdiction declaring the title of the judgment-debtor to be valid, the duty again arises in the execution proceedings that that party should be removed. (*Engineer, J.*) **KANWAR MUNSII LAI.** A.I.R. 1938 Lah. 695.

LIMITATION ACT (1908), Art. 182.

—Arts. 182 and 183—Applicability—Payment order by District Judge under S. 164, Companies Act.

Art. 182 of S. 164, Companies Act, the same jurisdiction and the same Court, yet the District Judge by not become the High Court for Limitation Act. Hence to a payment order passed by the District Judge under powers conferred by S. 164, Art. 183 has no application and the only article applicable is Art. 182. (*Dalip Singh, J.*) **PANNA LAL JAIN v. JAIN BANK OF INDIA, LTD., LAHORE.** 178 I.C. 288=A.I.R. 1938 Lah. 368.

—Art. 182—The provision that the debtor has not paid his debt and the words should be liberally interpreted in favour of the decree-holder. (*Venkata-*

While all the paragraphs in Art. 182 excepting para. (5) deal with the question of what is the time from which limitation begins to run in the case of a first ap-

10 B.A. 650=1938 A.L.R. 378= 1938 A.W.R. 115 (H.C.)=1938 A.L.J. 117= A.I.R. 1938 All. 210.

—Art. 182—Starting point—Decree on payment of court fee. See C. P. CODE, S. 149—APPLICABILITY. 1938 A.W.R. (H.C.) 538=A.I.R. 1938 All. 539.

—Art. 182—Starting point—Preliminary decree for partition—Order for costs being separately executable—Execution of latter—Limitation—Starting point. Where an order or decree, separately executable, is

execution of such order or decree is not by limitation. (*Mohamad Noor and Rawland, J.J.*) **SHAIKH SALAHUDDIN AHMAD v. IMAMUDDIN.** 175 I.C. 45=4 E.R. 504=10 E.P. 569= A.I.R. 1938 Pat. 188.

—Art. 182 (1)—Date of the decree—Copy of decree through Court's mistake bearing date on which it was drawn up instead of date of judgment—Application for

execution which was within limitation from the date of

LIMITATION ACT (1908), Art. 182.

the decree as stated in it beyond limitation from the date of the decree, i.e., the date of the decree.

Held, that the decree of the decree and show Court's mistake. The time-barred. (*Agarwala*, AZIZ FATMA, 174 I.O. 397 = 4 B.R. 427 = 10 R.P. 513 = A.I.R. 1938 Pat. 149)

—Art 182 (1)—“Date of the decree or order”—*Partition suit—Preliminary decree coupled with order for costs—Final decree not incorporating earlier order for costs—Execution for costs—Limitation—Starting point—Date of preliminary decree or date of final decree*

It is open to a Court in a suit for partition either to allow costs at the time of the preliminary decree or to defer payment of the final decree, earlier payment has no effect in the final decree.

Costs are payable at the time of the preliminary decree if application for execution of that order must be filed within three years of the preliminary decree, the party in whose favour the order is made cannot wait for the passing of the final decree and then apply for execution taking the date of the final decree as the starting point. It is no doubt open to him to apply to the Court to amend the final decree by incorporating order for costs, and if that is done, in three years of the final decree (*Khaja Mohammad Nour and Real* HUDDIN AHMAD v. IMANUDDIN 19 Pat L.T. 798)

—Art 182 (2)—Scope—If governs S. 48, C. P. Code—Appeal—Dismissal for default—Starting point for execution. See C. P. CODE, S. 48. 1938 P.W.N. 449.

—Art. 182 (2)—Appeal rejected for non payment of court-fee—Execution of decree—Limitation—Starting point.

Where a memorandum of appeal filed with deficit court-fee was neither registered nor numbered as an appeal but was rejected for non payment of the requisite

the execution of the decree is the date of the decree and not the date of the order of the appellate Court rejecting the memorandum of appeal. (*Derbyshire, C. J. and Mukherjee, J.*) PRODYOT COOMAR TAGORE v. MATHUR KANTA DAS 178 I.O. 62 = 42 O.W.N. 698 = A.I.R. 1938 Cal 533

—Art 182 (2)—Starting point—Appeal insufficiently stamped—Dismissal.

Where an appeal is preferred on insufficient court fee

SAD v. RADHEY SINGH. 173 I.O. 615 = 4 B.R. 303 = 10 R.P. 428 = 19 Pat L.T. 243 = A.I.R. 1938 Pat 79

—Art 182 (2)—“Where there has been an appeal”—Meaning of—Appeal from order refusing to set aside ex parte decree.

LIMITATION ACT (1908), Art. 182.

the meaning of the clause. (*King and Krishnaswami Aiyangar, J.J.*) SRI RAMACHANDRA RAO v. VENKATESWARA RAO. 1938 M.W.N. 1155 = 48 L.W. 751 = (1938) 2 M.L.J. 1048.

—Art 182 (5)—“Application in accordance with law”—Assignment of decree benami—Application for execution by real assignee—If saves limitation—Declaration in suit that latter is real assignee under deed—Effect of See C. P. CODE, Q. 21, R. 10. 17 Pat 223,

DWARI. 42 O.W.N. 842.

—Art. 182 (5)—Application in accordance with law—Death of decree-holder—Execution application preferred by third party—Joint right of applicant and widow of decree-holder alleged—Widow asserting her sole right—If can operate as step in aid of execution.

be brought on record as the legal representatives and that the decree should be executed for their joint benefit. The widow denied the nephew's right and claimed to be brought on record as the sole legal representative and to have the decree executed for her sole benefit.

Held, that such an application could be deemed in law to be that of the widow and would be a valid step in aid of further execution (*Venkatashubba Rao and Abdur Rahman, J.J.*) ANNAPURNALIMA v. VENKATASWAMI. 1938 M.W.N. 191 = 47 L.W. 693 = A.I.R. 1938 Mad 323 = (1938) 1 M.L.J. 135.

“Application in accordance with law”—Application as required by O 21, in accordance with law—Dismissing application when time limited—If not in accordance with law.

An execution application can be held to be not in accordance with law or if the defects or omissions to be found therein were such as to make it impossible for the Court to issue execution upon it, and not merely because it was defective in some minor particulars. An omission to comply with O 21, R 12, C. P. Code, viz., failure to annex a *talika* or inventory of the properties to be held to render the application in accordance with law, in the absence of the decree-holder or any property belonging to him in his possession or otherwise any inventory of the properties if necessary at all, and when it is not known in what mode the assistance of the Court is required in the application of the decree-holder. The question cannot be decided merely with reference to an order dismissing such an application on the ground that no inventory was supplied

LIMITATION ACT (1908), Art. 182.

LIMITATION ACT (1908), Art. 182.

(b). 1938 P.W.N. 73.
—Art. 182 (5)—Step in aid—Application for exe-

v. SAYAD HAMID ALI.

—Art 182 (5)—Step in aid—
ment of money deposited.

Where one of the instalments due has been deposited in Court an application by the decree-holder to withdraw the money is a step in aid of execution. (*Bennet, A. C. J. and Ganga Nath, J.*) LATAFAT ALI KHAN v. KALYAN MAL I.L.R. 1938 All 342=175 I.C. 136=10 E.A. 650=1938 A.L.R. 378=1938 A.W.R. 115 (H.C.)=1938 A.L.J. 117=A.I.R. 1938 All. 210.

—Art 182 (5)—Step in aid—Application for

act, when there is no dispute about it. (AMOLAK CHAND v. HOSHIAR SINGH. 175 I. 10 B.L. 698=39 P.L.R. 1027=A.I.R. 1938 Lah 138)
—Art 182 (5)—Step in aid—Application to recover monies deposited in Court.

—Art. 182 (5)—Step in aid—Application for substitution of name in decree.

A mere application for substitution of names in place

An application for transfer of a decree is a step in aid of execution. The fact that the decree-holder did not pay batta for notice is not material. It is not necessary to satisfy the Court that the step was taken with a genuine intention of obtaining (*Weston.*) JASRAJ RIKHRAJ v. GHISOO LAL 1937 A.M.

—Art 182 (5)—Step in aid—Application for Court.

Application for execution of a decree made to a wrong Court cannot be considered as a step in aid of execution. (*Dhise, J.*) ABDUR RAHIM v. FATEH MOHAMMAD. 177 I.C. 483=10 B.L. 329=40 P.L.R. 721=A.I.R. 1938 Lah 451.

—Art. 182 (5)—Step in aid—Award under Co-operative Societies Act—Application to Collector for execution—If saves limitation in respect of subsequent application to Court—Bombay Co-operative Societies Act, S. 59 (1) (b).

The "Collector" acting under S. 59 (1) (b) of the

enforce an award under S. 59 (1) (b) of the Bombay Co-operative Societies Act cannot therefore be regarded as an application made to a Court, and proceedings so taken under S. 59 (1) (b) are not steps in aid of execution so as to save limitation under Art. 182 (5) of the Limitation Act in respect of a subsequent application made to a Civil Court for execution. (*Rangnagar and Wadia, J.J.*) MARATHA CO-OPERATIVE CREDIT BANK OF DHARWAR v. KASHAV TRIMBAK HUNDE. 177 I.C. 897=40 Bom.L.R. 889=A.I.R. 1938 Bom. 424.

Art. 182 (5) of the Limitation Act. (*Tek Chand, J.*) MT. HARBANSO v. MUNSHI RAM. 40 P.L.R. 25.

—Art. 182 (5)—Step in aid of execution—Claim O. 21, R. 63—If amounts to.

holder applied for execution of his decree d certain property. A third party put in a attached property which was upheld and ment was raised. Thereafter the decree- a suit under O. 21, R. 63, C. P. Code, which was dismissed, as also an appeal and a second appeal therefrom. The decree holder then applied for execution as against other properties of his judgment- holder applied for execution of his first judgment of the dismissal of It was held that the step in aid of execu- made to a proper (*J. and Bose, J.*) 1938 N.L.J. 336=A.I.R. 1938 Nag 554

—Art 182 (5)—Step in aid—Notice under O. 21, R. 22, C. P. Code—Effect of. Quære Whether the issue of a notice or giving leave,

—Art. 182 (5)—Step in aid—Step taken by person claiming adversely to decree holder—If available to decree holder as saving limitation.

Steps taken by a person claiming adversely to the decree holder cannot be taken advantage of by the

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LIMITATION ACT (1903), Art. 182.

decree holder as steps in aid of execution. Though the decree holder prefers objections to the proceedings taken by the adverse claimant, and though there might be an agreement between the decree holder and the rival to act in a particular manner; the steps taken by the rival claimant cannot ensure to the benefit of the decree holder nor can the judgment debtor be deprived of his right to plead limitation by any agreement between persons with interests hostile to each other, who have been carrying on litigation amongst themselves. (*Varms, J.*)
ACHUTANAND GIRI, MAHANTH v SARAN SINGH.

1933 P.W.N. 652 = A.I.R. 1938 Pat. 531.

—**Art. 182 (5)—Step in aid—Transferee of decree—Application by under O. 21, R. 16, C. P. Code—Dismissal for non-payment of process-fee—If step-in aid.**

An application by the transferee of a decree for execution under O. 21, R. 16, C. P. Code, is a step in aid of execution under Art 182 (5) of the Limitation Act, although such application is dismissed for non payment of process-fee and for failure to serve notices on the judgment-debtors. (*Dinania and Sen, JJ.*) **DAYALBHAI v. DAYABHAI.**

176 I.C. 152 = 11 B.B. 17
 40 Bom.L.R. 411 = A.I.R. 1938 Bom. 309

—**Art. 182 (5)—Step in aid—What is application to transfer decree—Transferee Cons jurisdiction to execute the decree—Effect.**

An application to transfer a decree to

SITA KAM KAI v MADHU PRASAD.

1938 A.W.B. (H.C.) 763 = 1938 A.L.J. 1128

movable property is stayed on the judgment debtor giving security for mesne profits accruing during the pendency of the appeal against the decree, an application filed after the dismissal of the appeal for the realisation of mesne profits against the surety is governed by Art. 182 (7) and not by Art. 181 of the Limitation Act. (*Abdul Rashid, J.*) **NANU**

40 P.L.R. 473 = A

—**Art. 182, Expl. 1—Sec. debtor's—Execution against one—Insolvency proceedings against same—Limitation for execution against others—If saved—Provincial Insolvency Act, S 78 (2).**

supervening of insolvency so far as he is concerned, cannot keep the remedy of the decree-holder alive

LUNACY ACT (1912), S 48.

—**Art. 183—Applicability—Mortgage suit for sale in High Court—Application for final decree—Limitation. See LIMITATION ACT, ARTS. 181 AND 183.**

40 Bom.L.R. 507.

—**Art. 183—"Revivor"—Meaning of—Order of attachment after notice—Notice to minor judgment-debtor not served on proper guardian—Effect—If order of attachment operates as revivor.**

In order to constitute a revivor of a decree there must be expressly or by implication a determination that the decree is still capable of execution and the decree-holder is entitled to enforce it. An order of attachment of the properties of the judgment-debtors after notice to them under O. 21, R. 22, C. P. Code, amounts to a revivor of the decree, although the notice to one of the judgment debtors who is a minor is not served on the proper guardian of the minor, but on a wrong guardian. (*Fauz Ali and Agarwala, JJ.*) **SARJU SINGH v BHAGWAT PRASAD SINGH.**

176 I.C. 568 =

1938 P.W.N. 259 = 4 B.R. 738 = 11 B.P. 91 =

19 Pat L.T. 193 = A.I.R. 1938 Pat. 372.

—**Art 183—"Revivor"—What constitutes—Order containing qualification as to limitation and without prejudice to judgment debtor's plea of limitation—If operates as revivor.**

cannot operate as a revivor. (*Maclean and Sen, JJ.*)
HASAN v. ISAP.

40 Bom.L.R. 1180.

maintenance of the lunatic. Ife must under the provisions of S 38 of the Act apply to the High Court or the District Court for such an order (*Blacker J.*) **MAHOMED ZAMAN v. EMPEROR**

40 P.L.R. 496

—**S 48—Construction and scope—Enquiry under—Nature of—Question of title to property—If can be**

but permission is given

to the Court to make an order under the section. The words "concerning any matter whatsoever connected with the lunatic or his estate" are very wide, and

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matters concerning lunatics and their estates. The Court should, however, refer the parties to a regular suit be complex or be voted by niently be dealt cated in S 48 F MADRAS v. M.W.N. 1143 = 2 M.L.J. 1072,

LUNACY ACT (1912), S. 48.

—S. 48—Scope—"Petition"—Procedure — Separate original petition—Necessity.

The use of the word "petition" in S. 48 of the Lunacy Act is used in contradistinction to a "suit" and indicates

SABIS.

48 L.W.

MADRAS ACTS AND

Abkari Act (I of 18)
Agriculturists' Relief
Board Schools Act (V of 1926).
City Civil Court Act (VII of 1892).
City Municipal Act (IV of 1919).
City Tenants Protection Act (III of 1922).
Civil Rules of Practice.
Court of Wards Act (I of 1902)
Criminal Rules of Practice.
Debt Conciliation Act (XI of 1936).
District Municipalities Act (V of 1920)
Electoral Rules
Estates Land Act (I of 1908) as amended by
Act (XVIII of 1936).
Gaming Act (III of 1930).
Hereditary Village Offices Act (III of 1896).

Land Encroachment Act.
Local Boards Act (XIV of 1920)
Marumakkathayam Act (XXII of 1933).
Prevention of Adulteration Act (III of 1918)
Prohibition Act
Recovery of Rent Regulation (XXVIII
1802).
Revenue Boards Standing Orders
Revenue Recovery Act (II of 1864).
Subordinate Collectors and Revenue Malversation
Amendment Regulation (VII
1823).
Suppression of Immoral Traffic Act (V of

mortgage and can therefore claim the benefit of the Act as an agriculturist. (*Varadachariar and Abdur J.J.*)

PERIANNNA GOUNDAN v. SELLAPPA
48 L.W. 954 = (1938) 2 M.L.J. 1068.

7—Scaling down of debt—Mortgage debt
of power of sale under S. 69, Transfer of
1882—Failure of creditor to scale down
injunction to prevent sale—Mandamus.

creditor in exercise of his power of sale
the Transfer of Property Act, 1882, was
to be made by sale of the debtor's property.

the sale,

Held, that the suit was competent and that the sale

scaling down debt—Temporary injunction to restrain
sale—Power of Court to issue.

It is implied in S. 7 of the Madras Agriculturists
creditor to scale
debtors. There is
the scaling down
It will be only in

a case in which the creditor does not scale down his
claim in accordance with the provisions of the Act that
the intervention of the Court will be necessary. If a
creditor attempts to exercise his power of selling the

(1938) 2 M.L.J. 920.

—S. 3—Applicability and scope—Purchase of part
property at sale in execution of money
1930—Sale by purchaser to another in
in mortgage decree—Right of second
relief under Act—Relief if confined to

defendant executed a mortgage deed in favour
of on 27-7-1929. In execution of a
against the mortgagor the 8th defendant

to liability in the clause is wide enough to cover every person who is in any manner liable, either because he is party only in 1933 and his liability was not one subsisting prior to 1-10-1932.

MAD. AGR. REL. ACT (1938), S. 8.

Held, that the 9th defendant's liability was traceable to the original mortgage, that his purchase was not the basis of any new liability, and since the liability

MAD. CO-OP. SOCIETIES ACT (1932).

S. 365 (6) of the City Municipal Act is subject of Sub-S. (10) of S. 365, under which, if an applicant for license does not receive orders from the Corporation application year for a les for a answer,

1948], S. 8—Consecutive sentences—Legality of. See CR. P. CODE, S. 397. 1938 M.W.N. 352.

—S. 8—Consecutive sentences—Offender under sentence of detention—Order in later case directing sentence.

The M. provision therefore, must take effect at once and cannot be postponed. An order directing that a sentence of detention shall take effect from the date of expiry of a previous term awarded in a previous case is illegal (*Hornwall, J.*) NODI, *In re*. 177 L.C. 654—11 B.M. 343—11 Cr.L.J. 906—

1938 M.W.N. 535—47 L.W. 636—

A.I.E. 1938 Mad. 653—(1938) 1 M.L.J. 761

—S. 8—Consecutive sentences under—Legality.

One sentence of detention imposed upon an offender under S. 8 of the Borstal Schools Act should not be ordered to run after the expiry of another sentence imposed upon the same offender. A direction to that effect, i.e., that the sentence of detention in one case should take effect after the expiry of the sentence of detention in another case is not in consonance with law (*Pandurang Row, J.*) ALLAH BAKSH, *In re*.

178 I.C. 763—11 B.M. 167 (1)—39 Cr.L.J. 839—

47 L.W. 321—A.I.E. 1938 Mad. 567

MADRAS CITY CIVIL COURT ACT (VII OF 1892), Ss. 11 and 5 (1).—Scope and effect—Suit pending in Court of Small Causes—Transfer to City Civil Court—Jurisdiction of latter Court to try—C.P. Code, S. 24 (a).

created after Act to take effect after Act—Right of lessee or tenant to benefit of Act.

The Madras City Tenants' Protection Act cannot be passing of the Act is after the passing of the Act is in renewal of a ten the Act, by reason of S. 1 (iii) of the Act does not apply at all, the tenant cannot claim the benefit of the Act by reason of S. 12, because the Act, which cannot apply by reason of S. 1 (iii) is wholly inapplicable and not merely partly. (*Beasley, C.J. and Cornish, J.*) RANGANATHAN CHETTIY v. ETHIRAJULU NAIDU.

1937 M.W.N. 1315

MADRAS CIVIL RULES OF PRACTICE, R. 144 to 120—Validity—Rules made under Code of 1882 and not re-enacted under Part X of New Code of 1908—Inconsistency with O. 20, R. 17—Effect of—If invalid dates R. 114 to 120.

The Civil Rules of Practice made under the C. P. Code of 1882, but not re-enacted and published in accordance with the procedure prescribed in Part X of the Code of 1908, are invalid if and in so far as they are inconsistent with any of the rules of the First Schedule of the Code of 1908, R. 114 to 120 of the Civil Rules of Practice are inconsistent with O. 20, R. 17, C. P. Code of 1908, in so far as the former require and insist that questions of irregularity or fraud should be raised and decided before the preliminary decree is passed and before the case is remitted to the Commissioner for ques-

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deposit of license fee—Absence of answer from Corporation—Effect—Conviction for doing business without license—Sustainability

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bound by the liquidator's order.

Held, that the liquidator has jurisdiction to decide who are members and who are not. There is no bar to the

MAD CO-OP. SOCIETIES ACT (1932), S. 5.

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—S. 51 (5)—Construction—*Reverse any decision*
—Meaning of—Power to amend or correct mistakes.

The words "reverse any decision" in S. 51 (5) of the Co-operative Societies Act are used in the widest sense is practically equivalent to "correct" or "amend". To substitute one figure or one survey number for another in an award is an act of revision within the meaning of S. 51 (5). Where an award on a mortgage executed by a member to the society contains a wrong survey number, repeating the mistake in the mortgage deed and the

(1938) 1 M.L.J. 980.

MAD. DIST. MUN. ACT (1930), S. 93.

can be raised against him on that score. (*Pandrang Row and Abdur Rahman, J.*) ZAMINDAR OF SIVAGANGA v. MUTHIAH CHETTIAR.

I.L.E. (1938) Mad. 873=176 I.C. 872=
11 R.M. 188=1938 M.W.N. 53=47 L.W. 278=
A.I.R. 1938 Mad. 280=(1938) 2 M.L.J. 1016.
MADRAS CRIMINAL RULES OF PRACTICE,
R. 263—Meaning and scope of

R 263 of the Criminal Rules of Practice cannot be read as saying that a District Magistrate shall never refer an acquittal to the High Court. If it be read so,

1938 O.L.R. 61=1938 O.A. 54=1938 A.L.R. 77=
A.T.R. 1938 P.O. 34=(1938) 1 M.L.J. 426 (P.O.)

ceed with the execution. A sale held by the Court in contravention of S. 25 is entirely without jurisdiction.

the Act is therefore necessary in the case of a suit in respect of such property. Consequently the period of

to relief. See T. P. ACT, SS. 105 AND 107.

47 L.W. 668.

dedicated and
a—If exempt

—Subsequent death of intending
transfer by him of subject matter—Suit to

religious and
of the District
in respect of a
dedicated to

fers his interest in the subject matter to another does not render a fresh notice to be given by the successor in interest or transferee before he could file a suit. A devolution or transfer of the subject matter does not affect the object for which such notice is required to be given.

Abdur Rahman, J.—There is nothing in S. 49 of the Act which would make another notice essential so long as the suit is based substantially on the same cause of

being a choultry if and when circumstances change. (*IVadsworth, J.*) RAJAHMUNDRY MUNICIPAL COUNCIL v. MALLAVYA.

48 L.W. 417=
(1938) M.W.N. 952=A.L.R. 1938 Mad. 923=
(1938) 2 M.L.J. 639.

—B. 93—Profession tax—Liability for—Person holding appointment—Actual residence—If necessary.

The test of liability to profession tax in the case of a person holding appointment is not personal presence

MAD. DIST. MUN. ACT (1920), S. 93.

within the municipality. If he holds appointment with in the municipality for 60 days he is liable to profession tax. (*Lakshman Rao, J.*) **KRISHNAN NAMBIAR v. MUNICIPAL PROSECUTOR, CALICUT.** 47 L.W. 771—(1938) M.W.N. 536—177 I.C. 560—11 E.M. 345—39 Cr.L.J. 905—A.I.R. 1938 Mad. 709—(1938) 2 M.L.J. 31.

—S. 93 and Sch. IV, Br. 18 and 19—*Scope and effect of—Government Officer having quarters within Municipality going abroad on leave, the middle of half year—Salary received during abroad—If to be taken into account in assessing profession tax.*

in respect of his income will not exempt him from liability for profession tax to a Municipality. Profession tax

year will not entitle him to withhold payment of profession tax on that part of his income or salary which he receives not in India but abroad. His profession tax has to be calculated on the whole of his half yearly income and not merely on that part of it which is actually received in India. (*Stodart, J.*) **HILTON BROWN, In re.** 177 I.C. 605 (1)—11 E.M. 359—47 L.W.

—S. 93 (1) (b)—*Actual residence for 60 days—If essential—Acute—S. 3 (25)*

A person cannot be deemed to cease to reside in a house merely because he is absent from it if he has not abandoned his intention of returning. Nor can he be said to have abandoned his intention of returning when he merely signifies his intention of being absent at a hill station for a certain period. The assessee had a house within a Municipality in which he actually lived for a week in August 1937 from the 1st to 7th April and from 9th to 30th September. Between 7th August and 9th September he was absent at a hill station and before going to the hill station he informed the Municipality that he intended to be absent from 7th April till about

60 days in the ordinary sense of the term. The assessee, however, had resided within the meaning of S. 3 (25) of the Act and had not ceased to reside within the Municipality during the period of his absence at the hill station. (*Stodart, J.*) **VENKATACHALA MUDALIAR v. CHAIRMAN, COIMBATORE MUNICIPALITY.** 178 I.C. 499—48 L.W. 329—1938 M.W.N. 881—A.I.R. 1938 Mad. 880—(1938) 2 M.L.J. 353

—S. 94 and Sch. IV, R. 17—*Transacting "business"—Meaning of—Depot for storing and distributing goods—If office or place of business*

An office is merely a place where business is transacted, and the general rule is business is transacted at the place where the contracts are made and where control is exercised and not at the place where the contracts are merely executed. A depot or warehouse where goods are

MAD. DIST. MUN. ACT (1920), Sch. IV, R. 13.

stored cannot be said to be the place where business is transacted where the depot keeper has in fact no control over the trade or business. Though he might sell goods there for cash, it cannot amount to transacting business when the price is fixed elsewhere at the head office, when the vendees are certain licensed persons approved by the principal office and when all the accounts are maintained in the head office. The depot in such a case is a mere

—Ss 177 and 339—*Applicability and construction*

sanction was accorded. S. 177 is not restricted to the present owner of a building. It is intended to apply to the person who entered into the contract that by reason of his inability to comply with the provisions of the Act, he is unable to comply with the provisions of the Act. (*YAPURI CHETTIAR v. SALEM.* 178 I.C. 266—48 L.W. 667—A.I.R. 1938 Mad. 916—1938 M.W.N. 911—(1938) 2 M.L.J. 579.)

—S. 178—*Applicability—Owners of streets—Liability to conviction.*

The persons who are liable under S. 178 of the Madras District Municipalities Act are the owners or

A.I.R. 1938 Mad. 910—(1938) 2 M.L.J. 382

—S. 270-E—"Cart stand"—*Shed in which motor buses of owner stand at end of journey and where passengers alighted and new passengers get in for return journey—If "cart stand"*

The petitioner had a shed at T. His motor buses were taken to that shed on arrival at T. The passengers in the bus alighted at the shed and the new passengers for the return journey took their seats in the buses there. The buses did actually stand in the shed.

Held, that the shed where the buses not merely stopped for a shorter or longer time, but did actually stand for the purpose of their owner's business, was a "cart stand" in the sense in which that term is used in the Madras District Municipalities Act.

176 I.C.

A.I.R.

—S. 339—*Applicability—Conviction under—Sustainability—Proof of ownership in land abutting road—If necessary*

To sustain a conviction under S. 339 of the Madras District Municipalities Act, it would not be necessary to prove that the accused had any ownership in the land

—Sch. IV, R. 13—*Reason of tax—Compliance of requirement of rule as to communication of order and direction to pay—If condition precedent to taking distress proceedings for non payment of tax.*

MAD. ELECTORAL RULES, R. 12.

When a revision is preferred against an assessment to house-tax, R. 13 of Sch. IV of the District Municipalities Act requires that the chairman should communicate the orders passed thereon to the assessee and also direct him to pay the amount fixed in revision. The obligation of fixing the tax on revision was on the Municipality and no duty was cast on the assessee to fix for himself, the amount he had to pay. It is also a condition precedent which the chairman had to perform before he could take the appropriate proceedings for non payment of the tax. Proceedings by way of distress without complying with the rule in question is not legal. (*Venkataramana Rao, J.*) **PADMANABHA IYER v. COIMBATORE MUNICIPALITY.** 177 I.C. 512=11 R.M. 342=

47 L.W. 700=(1938) M.W.N. 633=

A.I.B. 1938 Mad. 282=(1938) 1 M.L.J. 99.

MADRAS ELECTORAL RULES, R. 12(3) and (4) and 48—Rule for forfeiture of deposit—If ultra vires—Meaning of total number of ballot papers and spoiled ballot papers in R. 12 (3) and (4)—Jurisdiction of Civil Courts—Suit that the interpretation of Election Rules by the Collector is wrong.

MAD. ESTATES LAND ACT (1908), S. 26.

be read as if they were present throughout in the earlier and unamended Act. As S. 13 of the Act XVIII of 1936 provides that all proceedings stayed under S. 127 of Act VIII of 1934 shall be disposed of as if the Act 1908 as amended by the 1934 and 1936 Acts had been in force at the original institution of the proceedings, the shrotriem in question must be deemed to have always and throughout been an estate and as such the plaints should be returned for presentation to the proper Court *i.e.*, the revenue Court. (*Venkataramana Rao and Abdur Rahman, JJ.*) **KONDAPPA NAIDU v. MAHALAKSHMAMMA.**

177 I.C. 652=11 R.M. 366=1938 M.W.N. 102= A.I.B. 1938 Mad. 339=(1938) 1 M.L.J. 206.

—Ss. 3 (11), 24 and 30—Charges for water taken without permission of landlord—If rent—Suit to recover—Nature of—Proper forum—If an enhancement of rent.

A claim by a landlord against a tenant for charges for water taken by him without permission for the purpose of raising wet crops on dry lands, is to be deemed to be rent within the meaning of the definition of 'rent' in S. 3 (11) of the Madras Estates Land Act as such a suit in

as is implied in the term 'forfeiture' strictly used.

—Ss. 11 and 189—Scope—Private contract between

and
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Rule:
J.)

contract being
the spirit of
of a bona fide
reference what

(1938) 2 M.L.J. 745.

MADRAS ESTATES LAND ACT (I of 1908, as amended by Act XVIII of 1936), S. 3 (2) (d)—Lands in a shrotriem—Suit for rent for period before the coming into force of the Amending Act—Stay under S. 127 of Act VIII of 1934—Effect of the coming into force of the Amending Act of 1936—Act XVIII of 1936 S. 13.

A suit for rent for the years 1920-1922 in respect of land in a shrotriem was decreed and Letters Patent under the Act were estates, was added, as it were, another category by the amendment of the S. 3 (2) (d), and the words should

over the said shrotriem in the Act in favour of such a contract. An arrangement between the land holder and certain of his ryots by which the ryots in return for the conferment of occupancy rights by the landholder agree to pay an enhanced rent, though it may have been the result of a bona fide settlement of a doubtful claim with regard to the lands being part of an estate, is not such as can be enforced in a Court of law. (*Venkataramana Rao and Abdur Rahman, JJ.*) **ZAMINDAR of KIRLAMPUDI v. LANKA APPAYYA.**

177 I.C. 745=1938 M.W.N. 258=47 L.W. 354=

A.I.B. 1938 Mad. 504=(1938) 1 M.L.J. 384.

—S. 26 (3)—Applicability—Conditions—Absence of relationship of landlord and tenant—Effect.

S. 26 of the Estates Land Act has no application to any case in which the relations of landlord and tenant do not subsist. The section contemplates a rent paying relationship. It has no application where there

MAD. ESTATES LAND ACT (1908), S. 26.

has been a complete surrender by the landholder of the right to collect any rent whatever on the land in question, as for instance, where there has been an out and out grant of both warams. (*Wadsworth, J.*) **PALANIAPPA MUDALIAR v. ABDUL SUBHAN SAHIB**, 48 L.W. 540 = 1938 M.W.N. 1065 = (1938) 2 M.L.J. 977.

—S. 26 (3)—*Applicability—Land granted permanently—No rent payable for first seven faslis subsequently Rs. 19-12-0 per annum for ever—Suit rent—Lawful rent—Deed of grant not registered—Admissibility.*

A predecessor of P granted certain lands to D, terms of the grant were that D should remain permanently in possession of the land, that no rent at all payable for the first seven faslis and subsequently the rent should be payable for ever at the rate of Rs. 19-12-0 per annum. P sued D claiming Rs. 959 7 0 as rent for three years D put forward the document embodying the terms of the grant made in his favour claiming that only Rs. 19-12-0 was payable per year. It was contended by P that the document not being registered was

MAD ESTATES LAND ACT (1908), S. 168.

—S. 74—*Scope and object of—Dispute as to validity of adoption or claims of rival landlords—If can be settled under.*

S. 74 of the Estates Land Act was not intended to settle disputes regarding the validity of an adoption or the claims of rival landlords. It was intended to enable the Collector to ascertain under certain circumstances

—S. 77—*Jurisdiction of Collector—Lands found cultivable about 1900 but subsequently built upon and occupied by buildings—Nonpayment of rent for 20 years—No proof of tender of fatta—Express consent of landlord not proved—Inference—Suit for rent—Jurisdiction of Collector.*

Holder of—If ryot.

It is extremely doubtful whether S. 26 (3) of Madras Estates Land Act has any application to land held free of rent. When there is no rent at all, it cannot be held that the lands have been held on a rate of lower than the lawful rate payable, when land is free of rent the person who holds the land cannot ryot as defined by S. 3 (15) of the Act. (*Wadsworth, J.*) **ADILAKSHMI DEVAMMA GARU v. APPA**

1938 M.W.N. 1134-48

(1938) 2 M.L.J. 2

—S. 30—*Scope and applicability of*

It is only in respect of advantages which said to have brought about a new state of proceedings under S. 30 were contemplated and not for

these lands was a agriculture, though purpose, (3) that such an inference lands were that in the lands were as in force, a Court of the **TIRUPATI**

48 L.W. 511 = 1938 M.W.N. 1062 = 3) 2 M.L.J. 829 1938), S. 168—Collector and raising rent before S. 168 (2)

der S. 168 of the

NAMRAJU, 1 L.R. 1938 Mad. 630 = 175 I.C. 118 = 11 B.M. 15 = 47 L.W. 179 = 1938 M.W.N. 174 = A.I.R. 1938 Mad. 459 = (1938) 1 M.L.J. 204.

general application (*Leach, C.J. and Burn, J.*) **RYOTS OF GARABANDA v. ZAMINDAR OF PARLAKI-MEDI** 1 L.R. (1938) Mad. 858 = 47 L.W. 181

MAD. ESTATES LAND ACT (1908), S. 205

—S.

—*Reason*

If a lan

Act, and the ryots plead that they have paid rent to his adopted son and that no rent is payable, the Deputy Collector can only settle the disputes between the parties under S. 75 (2) on the ground that the ryots have alleged that no rent was payable. The decision would then fall under S. 75 (8) (d) and be appealable to the District Judge, and the jurisdiction of the District Collector in revision would be ousted. Subject to a possible appeal to the District Court under S. 75 (2) (e), the order of the Deputy Collector would be final and no application in revision would lie.

ANDI SERVAI v.

(1938) I.

—S. 212 (1)

case—Obstruction by person declared by Civil Court to be absolute owner—Entry by person contrary to decision of Civil Court—Offence.

An obstruction is not without lawful excuse when it is made by a person who has been declared to be absolute owner of a certain property by the Civil Court, and when the person making the entry is asserting title to the property in spite of the decision of the Civil Court. Such obstruction is not an offence under S. 212 (1) (e).

"Common gaming house"—Existence of restriction on use of gaming house by a section of the public—Place, if ceases to be common gaming house.

There is no warrant of gaming house as defined. Act cannot include any game where his reasons for believing any information the

MAD. HEREDITARY V. O. ACT (1395), S. 6.

fact that he
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his warrant giving authority to a police-officer to do certain things (*Burn, J.*) NARANAPPAYYA, *In re*.

176 I.C. 256 = 39 Cr. L.J. 719 (1) = 11 R.M. 80 =

1938 M.W.N. 319 = 47 L.W. 750 =

A.I.R. 1938 Mad. 550 = (1938) 1 M.L.J. 609.

—S. 6—Presumption under—Conditions of raising—Source of information on which warrant of search was issued—Evidence as to—Duty of prosecution to let in—Presumption of regularity of judicial and official acts—Applicability.

y that before the presumption under Gaming Act can be available there is evidence for the prosecution that the under S. 5 of the Act upon proper evidence to lead a Magistrate to believe

that the room in question was used as a common gaming house. There is no reason why the presumption under S. 114, III (e) of the Evidence Act that judicial and official acts have been regularly performed should not be applied. It would be against public policy in most cases if the prosecution were compelled to let in evidence in regard to (*Horwill*, *PEROR*).

15 = (1938) 2 M.L.J. 266.

VILLAGE OFFICES

10 (1) and (5) and 21—

Village divided into two—Member of family of last holder passed over—Appointment of stranger—If justified—Suit by member of family of last holder for jurisdiction of

village, but were he division, the 1st

(1938) 2 M.L.J. 266.

—S. 5—Warrant under—Form and validity—Conditions.

There is no prescribed form for warrants under S. 5. S. 5 does not require the Magistrate to record any where his reasons for believing any information the

to appointments under S. 6 (1); the fact that the 1st respondent's name was registered under S. 10 (5) carried with it no right. The Collector's duty was to select a person from the family of the 1st respondent's father who was qualified to hold the office, if there was such a person, and since the first respondent was a

MAD. HEREDITARY V. O. ACT (1895), S. 6.

V. DASARADHARAMI REDDI.

I.L.B. (1938) Mad. 841=175 I.C. 401=
10 B.M. 769=1938 M.W.N. 369=47 L.W. 498=
A.I.R. 1938 Mad. 441=(1938) 1 M.L.J. 552 (F.B.).
(as amended in 1930), S. 6 (3)—*Scope—If retrospective.*

S. 6 (3) inserted in the Madras Hereditary Village Offices Act by the amending Act of 1930 is not retrospective in effect. (*Leach, C. J., Varadachariar and Nockett, J.J.*) RANGAREDDI v. DASARADHARAMI REDDI. I.L.B. (1938) Mad. 841=175 I.C. 401=
10 B.M. 769=1938 M.W.N. 369=47 L.W. 498=
A.I.R. 1938 Mad. 441=(1938) 1 M.L.J. 552 (F.B.)

tion, and expressly excludes the jurisdiction of the civil Court *inter alia* to take into consideration or decide any claim to recover the emoluments of any of the offices specified in S. 3. Unless in a given case jurisdiction conferred by S. 13 upon the Revenue Courts, it should not be deemed taken away under S. 21 from the civil Court. (*Venkatasubba Rao and Abdur Rahman, J.J.*) VEERANNA v. MOCHARANNA.

1938 M.W.N. 284=47 L.W. 421=
A.I.R. 1938 Mad. 505=(1938) 1 M.L.J. 406
—Ss. 13, 21 and 23—*Jurisdiction—Claim to office of Village Munsif as of hereditary right—Suit in Revenue Court—Second appeal to Revenue Board—Decision in—Finality—Suit in Civil Court to declare illegal and ultra vires—Maintainability.*

in a suit that the decision is illegal or ultra vires (*Pandurang Row and King, J.J.*) VENKATASUBBAYYA v. SECRETARY OF STATE. 178 I.C. 534=
(1938) M.W.N. 477=A.I.R. 1938 Mad. 483=
(1938) 1 M.L.J. 539.

—Ss. 13 and 21—*Jurisdiction—Village black smith—Suit by office-holder for portion of snam land alienated by previous holder—Jurisdiction—Revenue*

MAD. H. O. (O. S.) RULES O. 5, R. 5.

ras Hereditary necessary for
tain his action
service inam,
Revenue Court

under S. 13 of the Act. Where the plaintiff sues on the ground of a trespass or the ground that the land is his private property or upon the footing that a lease has expired, there is no need for him to rely upon the fact of the land being an emolument of a service inam. In such cases the suits are triable by the civil and not by the Revenue Court. One M., a village blacksmith in a ryotwari village alienated to various persons portions of his service inam lands. He was thereupon dismissed and his widow was appointed to that office. She brought a suit in the Court of the Deputy Collector against the defendant who was in possession of a part of the land as an alienee for possession and got a decree,

in the jurisdiction of the Revenue Court, and hence the writ of *certiorari* should be refused, the plaintiff, though he was actually holding an office, had to allege that he was entitled to hold such office, i.e., that he is the rightful office holder, which was the basis of his right to the emoluments claimed, and therefore the jurisdiction remained with the Revenue Court under S. 13 of the Act. (*Venkatasubba Rao and Abdur Rahman, J.J.*) VEERANNA v. MOCHARANNA.

1938 M.W.N. 284=47 L.W. 421=
A.I.R. 1938 Mad. 505=(1938) 1 M.L.J. 406.
—S. 13—Scope and effect—Collector's power of revision under Regulation VII of 1828—If abrogated. See MADRAS SUBORDINATE COLLECTORS AND REVENUE VALUATION (AMENDMENT) REGULA-

2 M.L.J. 488.
—Second appeal
hearing appeal

RULES, O. 5-A, R. 5—Suit on behalf of trust for recovery of trust properties—Defendant claiming under sale deed with express covenant for title and indemnity—Application by defendant for making vendor party to suit—Maintainability—Procedure—Power and duty of Court.

In a suit for recovery of immovable properties alleged to be trust properties belonging to a deity, the plaintiff sought to ignore certain alienations made in violation of the terms of the original endowment. The 1st defendant, one of the alienees, pleaded that he was a bona fide purchaser for value and that he was protected by express covenants of title and indemnity in the

MAD H. C. (O. S.) RULES, O. 7, R. 7.

sale deeds which he took from his vendors, and as he had the right of indemnity against his vendors he sought to avail himself of the third party procedure under R. 5 of O. 5-A of the Original Side Rules by which he wanted to have his vendors also made parties to the suit so that the question of their liability to him might be determined in case of his own loss in the action of the plaintiff.

Held, (1) that the right of indemnity having been given in terms by the sale deeds, in favour of the defendant, *prima facie* there was a right to indemnify against the immediate vendor of the 1st defendant; (2) though a covenant for title was not the same thing as

MAD. HINDU REL. ENDOWMENTS ACT (1925), S. 9.

nature of the institution and the nature of the user and the way the institution has been administered. (*Paradachariar and Burn, J.J.*) **NARAYANAN NAMUDURIPAD v. BOARD OF COMMISSIONERS FOR THE HINDU RELIGIOUS ENDOWMENTS, MADRAS.**

175 L.C. 738 = 11 R.M. 1 (2) = 1937 M.W.N. 1171 = A.I.R. 1938 Mad. 209.

—S. 65-C—Scope—Notified temple—Powers of

was not a covenant for title was not the same thing as

would be a good ground for revision under S. 115, C.P. Code (*Burn, J.*) **KUMARA ALAGU SAMAYYA NAICKER v. MADRAS HINDU RELIGIOUS ENDOWMENTS BOARD.**

174 L.C. 841 = 10 R.M. 743 = 3 M.W.N. 616 = 47 L.W. 647 = A.I.R. 1938 Mad. 321.

—S. 84—Provisions of succession to founder—If must continue to be in

force at time of petition under S. 84.

The provision for the succession to the trusteeship of an institution which is made by the founder of it is something which is done once for all at or about the time of the foundation. The words in sub-S. (5) of S. 9 do not imply that the provision made by the founder must continue to be in force at the time of the Act. (*Burn, J.*) **KUMARA MAYYA NAICKER v. MADRAS HINDU ENDOWMENTS BOARD.**

174 L.C. 341 = 11 R.M. 743 = (1938) M.W.N. 616 = 47 L.W. 647 = A.I.R. 1938 Mad. 321.

—Ss. 9 (7) and 69—Applicability—Mutt holding properties granted to it for purposes of worship, light-

and performance of pujas at the shrines within the mutt and other lands were held by it for the maintenance

the merits of the case may still remain, but it must be satisfied that the defence raised shows that there is a fair issue to be tried before a competent tribunal. (*Madhavan Nair, O.C.J. and Krishnaswami Aiyangar, J.*) **LTD.**

MAL RULES, R. 2-A—Scope—If ultra vires—Single Judge of High Court—Jurisdiction to issue writ of habeas corpus. See GOVERNMENT OF INDIA ACT (1915), S. 108. 1938 M.W.N. 1161.

MADRAS HINDU RELIGIOUS ENDOWMENTS ACT (1 OF 1925), S. 9(12)—“Temple”—Proof of user by public and of dedication—Inference from circum-

but if a temple is shown to possess certain characteristics which are mentioned as those of a “temple” as defined in S. 9 (12) of the Madras Hindu Religious

use of the public or of the user by the public being as of right is necessarily a matter of inference from the

MAD. HINDU REL. ENDOW. ACT (1927), S. 9.

MAD. HINDU REL. ENDOW. ACT (1927), S. 57.

and was a matt of the character contemplated by Madras Act II of 1927, and the Board had the right

may proceed to consider whether a case for the settlement of a scheme has been made out. The inquiry and thorough than had 532 and (1934) ef to. (*Madharan amy Aranganar, J.*) INDU RELIGIOUS 48 L.W. 793= 938) 2 M.L.J. 987.

J.) VEFRAYYA v. BOARD OF COMMISSIONERS FOR H. R. E., MADRAS. (1938) M.W.N. 744= 48 L.W. 735=A.I.R. 1938 Mad. 810= (1938) 2 B.T.J. 86

—S. 9 (12)—"Temple"—Public religion
—Test to find out religious character of worship
—Distinction—Performance. *Nitya*

—Ss. 43 (3) and 73 (3)—Scope—Dismissal of hereditary *Archaka* of temple by trustee—Remedy—Suit to set aside dismissal—Jurisdiction of Civil Court.

The test to find out whether the worship in an institution is religious or not is not whether it conforms to any particular school of Agama Sastras; the question must be decided with reference to the view of the class of people who take part in the worship. If they believe in

machinery of appeal and conferring finality on the decisions in appeal by dismissed office holders are intended to oust the jurisdiction of the Civil Courts to question the propriety of an order of dismissal passed

MENTS, MADRAS v. NARASIMHAM

48 L.W. 791=1938 M.W.N. 1251

—Ss. 18, 57 and 62—*Excepted temple*—Framing of scheme—Board proceeding on the assumption that a person was not hereditary trustee—Has hereditary trusteeship established in a suit under S. 57—Case against the trustee not stated clearly—Procedure causing prejudice to trustee.

The Commissioners of the Endowments Board proceeded under Ss. 18 and 57 of the Hindu Religious

his father late C. So long as they pay an annual contribution of rupees three thousand which will be set apart for the *thirupam* work of the temple and for the upkeep and maintenance of the temple walls and its premises." It was also found that the said S actually offered to endow a sum of Rs. 25,000 for establishing a *theragam* patasala as an adjunct to the temple, and that this offer which was accepted by the Temple Committee and the Board, was also one of the reasons for the appointment of S as trustee for life under certain condi-

granted a declaration in his favour that he was the hereditary trustee and the suit temple one. In the suit the Court decided framed by the Court was not *ultra* was made out for disturbing it. T revision petition to the High Court, the original petition. On the other

the office of trustee for a monetary consideration, being

MAD. HINDU REL. ENDOW. ACT (1927), S. 63.

there were such a custom, it could not be recognised by law.

Quære—Whether the Board has power to make an appointment of a hereditary trustee in a non-exception temple? (*Pandrang Rao and King, J.J.*) A. L. S. P. P. L. SUBRAMANIAM CHETTIAR v. NATESA GURUKAL. 177 I.C. 823=47 L.W. 529=

1938 M.W.N. 393=A.I.R. 1938 Mad. 713= (1938) 1 M.L.J. 517.

—S. 63—*Suit to set aside or modify order settling scheme—Limitation—Six months period—Computation of—Period of duration originally fixed, altered and modified by later orders—Starting point of limitation.*

ed for the original period of two years. The order of 16-3-1932 amounted in substance to framing a new scheme. The trustee instituted a suit on 4-7-1932 to set aside the scheme, which was dismissed on the ground that it was barred by limitation having been brought more than 6 months after the publication of the scheme framed on 31-8-1929.

—S. 73—*Scope of—Suit to establish a right to be a co-trustee and for a scheme—Recognition of a system of rotation—Proper procedure*

On a c
of trust
scheme,
in which
existing trustees

enforce a system of rotation which by the consent of co-trustees has been in existence for many years. But

MAD. IRRIGATION CESS ACT (1865), S. 1.

J.) SANGA' SASTRI.

A.I.R.
MADRAS II

1904), S. 4—*Scope—Grant of cowle at favourable rent or umbalam land rent free—Validity—Cowle granted long before Estates Land Act—Validity of.*

Section 4 does not prohibit either a cowle at favourable rate of rent or the grant of umbalam lands rent free. Where the evidence showed that a certain cowle was granted long before the passing of the Madras Impartible Estates Act and the Estates Land Act of 1908,

to the contrary, the grant was as said grant was der S. 26(3) of cowle was valid on, J.) SAKKA-RIAR.

A.I.R. 1938 Mad. 374.

MADRAS IRRIGATION CESS ACT (VII OF (1865), S. 1 (b)—Penal cess—Levy—Rules as to—remedy for improper levy. See CROWN—PREROGATIVE TO ASSIGN OR ALTER SOURCES OF IRRIGATION.

(1938) M.W.N. 194.

—S. 1 (b)—*Penal water rate, when can be levied*

with the permission of Public Works Department, and has gone on for a period over 40 years and the penal water rate has been levied in respect of such a user

authority and till such authority is withdrawn or

(*Pandrang Rao*
NARAYAN PILLAI
47 L.W. 199= (1938) M.W.N. 97

ding water from tent of—Ancient diverting water and supply channel remaining unaltered—Dry land brought under wet cultivation—Liabi-

Religious Endowments Act they are proper, though perhaps not necessary parties to an application before the District Judge under S. 84(2) of the Act. (*Aravam*,

imposed on the inamdar on the ground merely that he has brought under wet cultivation some dry land in later years. (*Burns and Stodart, J.J.*) SECRETARY OF

MAD. IRRIGATION CESS ACT (1865). S. 1.

STATE v. PONNAMMAL. 48 L.W. 180—
1938 M.W.N. 733—A I.R. 1938 Mad. 838—
(1938) 2 M.L.J. 214

—S. 1, first proviso—Scope—Right to exemption from cess—Conditions of—Absence of proof of engagement—Description of land as "wet"—If imports engagement—Minor inam in ry. twari village adjoining Agraharam—Channel passing through Agraharam and supplying water to Agraharamdar under engagement—Inamdar taking water through Agraharam land—If protected.

the Inam Fair Register as "wet" land does not import an engagement to exempt it from water cess. When the inamdar does not prove an engagement with the Government exempting him from cess, and when there is no reference in the inam nanam whatever to any source of water supply the being produced—the description does not cast a duty on the the water free, especially in to show that at the time of fact any source of irrigation at down as a broad proposition of law that once Government's liability to supply water is shown—it

point whatsoever. No Court can give countenance to such a proposition which would lead to. Nor can the Inamdar claim immunity b on what may be termed as *ius tertii*. under the Act is not whether the water property of some third party. e.g., the who is protected by an engagement, and through whose land the inamdar takes, but whether the channel, or

MADRAS LOCAL BOARDS

S. 88—Ancient—Grant—Pay kattubadi cess—Inference that, and not by ruling power—If 1.

In the case of ancient grants time when the proprietary rights of the ruling power and

A I.R. 1938 Mad 219
—S. 88—Inam lands not included in assets of zamindari—Inamdar—Liability to zamindar for cess.

The scheme of the Local Boards Act is that inam lands have not been included in the assets zamindari, the inamdar is himself a landholder directly under the Government. But if the assets

MAD. LOCAL BOARDS ACT (1920), § 214.

the inam lands as well, he has no direct relation with the Government but the Government collects the cess from the landholder and the landholder reimburses himself from the inamdar treating him as an intermediate landholder. (Stodart, J.) RAJA OF VIZIANAGARAM v. ANNAPURNAMMA A.I.R. 1938 Mad. 219.

—S. 93—Construction—"In receipt of any income"—Income accrued outside in foreign business and remitted by agent to principal residing within Local Board area—If income received within Local Board

—S. 93 and Sch. IV and S. 9—Scope and effect of—Retrospective assessment—Legality.

The effect of S. 93 and Sch. IV & S. 9 of the Madras

assessee has not been assessed for the first half-year in a particular year, but towards the close of the second half— as having been for rm monthly income as amount to twice the appropriate half yearly tax is imposed on him, that

Stodart, J.) AUDIAPPA CHETTI v. TALUK BOARD OF DEVAKOTTA. 1938 M.W.N. 931—

48 L.W. 712—A I.R. 1938 Mad. 941—
"L.J. 589

is—Notice Failure to notice to comply with

f the Local

tal or a conviction in a previous prosecution for disobedience under S. 159 (1) is no bar to the trial of the same accused in respect of a later notice calling upon him to encroachment (Bura and Stodart, ROSECUTOR v. SABAPATHI CHETTI. 138) Mad. 902—1938 M.W.N. 578—
176 I.C. 395—39 Cr.L.J. 712—11 R.M. 69—
47 L.W. 777—A I.R. 1938 Mad. 847—
(1938) 2 M.L.J. 156

MAD. LOCAL BOARDS ACT (1920), S. 223

—S. 223—*Applicability—Withdrawal of action—Application for—Right to make—If can officer sanctioning prosecution—Complaint section officer on sanction of President of District*

a prosecution is conferred not by the Local Boards Act but by the Criminal Procedure Code. Where a prosecution is sanctioned by the president of a District Board and instituted on the complaint of the latter as the complainant has power permission to withdraw the case. It is held that because the prosecution has been authorised by the president of the District Board the president can withdraw the complaint.

Row, J.) PERIASWAMI GOUNDAN, *In re*.
178 I.O. 149=1938 M.W.N. 423=11 B.M. 35=

A.I.**MADRAS OF 1937),**

member of the
for personal

By virtue of the share of a joint property of a member of the partition and have his share in the joint estate converted into a separate estate, and a creditor is entitled to attach and sell his share. (*Burn and Venkataramana Rao, J.J.*) SUBRAMANYAM TIRUMURUPU v NARAINA TIRUMURUPU, 178 I.O. 525=(1938) M.W.N. 478=47 L.W. 538=A.I.R. 1938 Mad. 553=(1938) 1 M.L.J. 710.

—S. 43—*Construction and scope—"At any time"—Attachment of share of member of tarwad in execution of decree—Subsequent application by other members of tarwad for registration as impartible—Order registering tarwad impartible—Effect—If precludes sale of attached share in execution.*

The share of a member of a Malabar tarwad is capable of attachment and sale in execution of a decree

judgment-debtor or any other member of the tarwad which brings about the termination of that interest of the member would operate to the prejudice of the right

MAD. RECOV. OF ABBEARS OF RENT REGN.

he subsequent registration does not consequently interfere with the execution share. (*Burn and VAN D. NARAYANAN* 130=47 L.W. 780=938) 1 M.L.J. 715.

—S. 43—*Scope—Application to register tarwad as impartible—Sust for partition—Subsequent registration of tarwad as impartible—Effect—Sust—If*

ble pursuant to an application in that behalf made before the court cannot render the suit incompetent. The

to Sanitary Inspector—If sale—Prosecution of accountant and Secretary of Society—Maintainability.

The supply of sample to a Sanitary Inspector under S. 14 of the Madras Prevention of Adulteration Act is not a sale, and when a sample is so supplied by the accountant of a Co-operative Society at one of its branches neither the accountant nor the Secretary of the Society can be said to offer the article for sale so as to render them liable to conviction under S. 5(1)(d) read with the rules. (*Lakshmana Rao, J.*) PUBLIC PROSECUTOR v. SRINIVASA RAO.

176 I.O. 272 (1)=39 O.L.J. 735=11 B.M. 50=1938 M.W.N. 317=47 L.W. 535=

A.I.R. 1938 Mad. 541=(1938) 1 M.L.J. 689.
MADRAS PROHIBITION ACT (X OF 1937), S. 4

accused, a toddy renter, is that he offered a bottle of liquor to his father's customers along with his father, he cannot be said to have possessed the liquor, while his

creditor. The said expression "at any time" and Cl. 4 of S. 43 must be so construed as not to defeat the right which third parties had acquired before the registration of the tarwad is effected at any rate before the applica-

have no right to enter in the land. The possession of the tenant is displaced by virtue of the statute and it is not therefore by virtue of any confidence reposed by the defaulting tenant in the zamindar that possession is

MAD. REV. BOARD'S STANDING ORDER.

taken, but in opposition to and in derogation of his rights as owner to remain in possession, and therefore the relationship thus created by attachment can in no sense be one of trustee and *cestui que trust* (*Venkata Ramana Rao, J.*) **DESHAGIRI RAO v. VENKATA RAMAYYA APPA RAO BHADUR.**

A.I.R. 193

MADEAS REVENUE BOARDS

ORDER, No. 15—Valuable Crown Land Revenue Divisional Officer to *dissuade*—Jurisdiction of Collector to set aside—Civil Court—Right to question order of Collector. See **GRANT—CROWN LAND.**

1938 M.W.N. 65.

MAD. SUR & BOUNDARIES ACT (1923), S. 13.

(1938) M.W.N. 837—A.I.R. 1938 Mad. 835—

(1938, 2 M.L.J. 337.

—S. 58—Scope—Co sharers of revenue paying estate—Payment of revenue of entire estate by one to avert revenue sale—Suit for contribution against others—Jurisdiction of Civil Court—If barred

Act. A co-sharer of a revenue paying estate who pays the whole revenue in order to save, and does so save the estate from liability to be sold by the Government for realising the revenue is, by operation of law entitled

confirmed he is under an obligation to register the lands in the name of the and grant the certificate that the Collector purchase under S. raised before the C. Rao, J.) **PADMAN**

tax Act—Test.

1937 M. = 24

—S. 40—Enquiry under—Scope—Plea of tenancy purchase—Power of Court

There is nothing in the Recovery Act which would from contending that the certificate of sale is issued only a benamidar. The process to be issued in application under the appropriate writ, laid down by the such enquiry as contemplated by the Code, relating The Court in the Act is therefore benami and direct respondent that the made benami for the respondent with the latter's moneys. (*Venkataramana Rao, J.*) **PADMANABHA IYER v. VISALAKSHI ACHI.**

11 B.M. 130—19:

A I

—Ss 40 and 42—Scope—Enc Property of Malabar Jenmi—Effect Property in possession of tenants under Kanomdar claiming title of improvements—Purchaser's right to

RAJA CHETTIAR v. SECRETARY OF STATE.

1937 M.W.N. 1258.

of "superin-
the District
It is only
at a Revenue
the powers
The District
Regulation
even after
Lakshmana

Rao, J.J.) **SRINIVASA AYYANGAR v. JAGANNATHA AYYANGAR.** 48 L.W. 289—1938 M.W.N. 840—

ACT
Secr—
by un-

An order by the survey officer on a dispute about boundaries is conclusive as to the rights of the parties

of the Kanom encumbrance. But the Kanomdar who are in possession of the property and claimant is out of possession, then it would not be open

of the Act, but is entitled only to symbolical possession. (*Madhavan Nair and Abdur Rahman, J.J.*) **AYYA PATTAR v. KRISHNAN.** 48 L.W. 249—

would not be open to him in subsequent proceedings contend that he had on the date of the order acquired title by adverse posse

MAD. SUB. & BOUNDARIES ACT (1923), S. 14.

survey officer, merely on a consideration of (documentary) of ownership, gives an regarding title, there is no reason why should bar the unsuccessful claimant etc. in subsequent proceedings that at the time of the survey officer's order he had trespassed successfully on the land in question and that his unlawful possession continued and was openly hostile to the real owner for the requisite period, taking into consideration possession anterior to and posterior to the survey officer's order, for establishing title by adverse possession. Similarly, if the survey officer goes into the facts, finds that the unsuccessful claimant is in possession but that his possession is unlawful, and lays down the boundary in accordance with his finding as to title, bar the unsuccessful plaintiff that his unlawful and the survey officer to ex

to justify the plea of title by adverse possession in a later suit. The governing factor must be what the survey officer actually decided. The unsuccessful claimant cannot go behind that decision, but there is no reason why he should not in subsequent proceedings put forward any claim which is not inconsistent with that decision. (*Wadsworth, J.*) **ACHUTHARAMAYYA v. SOORAPPAYYA.** 1938 M.W.N. 1066 = 48 L.W. 595 = (1938) 2 M.L.J. 894.

S. 14—Limitation for suit—Starting point—“Notification”—Supplemental notification terminating supplemental survey—If furnishes fresh starting point of limitation.

The notification from the date of which the three years' period for a suit under S. 14 of the Survey and Boundaries Act commences to run is the notification issued under S. 13 that the survey of the village concerned is complete, in other words, the final notification terminating the survey. A supplemental notification terminating a supplemental survey of subdivisions consequent on the re settlement miscellaneous inspection cannot extend the time for filing a suit to contest the correctness of the boundaries laid down in the main survey, except in so far as it relates to boundaries changed in the course of the supplemental survey. (*Wadsworth, J.*) **ACHUTHARAMAYYA v. SOORAPPAYYA.** 1938 M.W.N. 1066 = 48 L.W. 595 = (1938) 2 M.L.J. 894.

under S. 6(1) But where the warrant is issued under Ss. 13 and 14, and merely authorises the Inspector of Police to ascertain whether certain offences under the Act were committed, the order passed by the Magistrates of the Juvenile Court under S. 6(2) is in-

(1938) 1 M.L.J. 886

MADRAS VILLAGE COURTS ACT. (1 of 1889), Ss. 15, 21 and 73—Jurisdiction of Requisites of Civil Procedure Code a special tribunal has been given jurisdiction

Under S. 15 of the Madras Village Courts Act, 1889 only suits which are filed against either reside within the local limits of

MAHOMEDAN LAW.

defendant in his written statement questioned its jurisdiction and moved by a separate application to the District Munsiff under S. 21 of the Act to withdraw the suit from the Village Court, but before the said application was heard the suit was heard *ex parte* and disposed of in favour of the plaintiff and therefore the defendant applied once again to the District Munsiff for setting aside the decree under S. 73, on the questions whether the Village Court had jurisdiction and whether the dismissal of the application to set aside the decision was

of goods in dispute at village D as alleged in the case would not confer jurisdiction under S. 15. The position might have been different had the provisions of the Code of Civil Procedure applied. But where a special tribunal, different from the ordinary Courts of the land, has been brought into being by an Act one should look to the specific grounds given in that Act which would confer jurisdiction on that tribunal. (2) That the order dismissing the application of the petitioner under S. 73 was improper and therefore should be set aside. (*Abdur Rahman, J.*) **KRISHNA CHETTY v. NARAYANAPPA.** 47 L.W. 259 = 1938 M.W.N. 242 = A.I.R. 1938 Mad 497 = (1938) 1 M.L.J. 229

MAHOMEDAN LAW.

Apostacy.
Alien law—Applicability.
Applicability
Co heirs—Suit for contribution,
Co sharers.
Dower.
Gift.
Guardianship.
Legitimacy.
Marriage.
Minor.
Pre-emption
Sajjada-nashin.
Succession.

—Renunciation of religious faith—

of a religious faith requires no other person's declaration, the only condition declaration is not casual, of which the declarer may repent afterwards, but it should be attended with volition and should be such to which the declarer adheres and in which he persists. The motive of the declarer is immaterial. A genuine conversion is one which has actually taken place and if once it is proved as an accomplished fact, further enquiry is barred. Where the plaintiff declared not only in the plaint but even in her statement in Court as her own witness that she did not believe in God, the Quran and the Prophet of Islam,

Held, that she at once went out of the pale of Islam

MAHOMEDAN LAW.

Din Mohammad, J.J. MT. RESHAM BIBI v. KHUDA BAKHSH.

I.L.R. 1938 Lah. 277-

40 P.L.R. 722-A.I.R. 1938 Lah. 482.

Alien law—Applicability.

Mahomedans can only be governed by an alien law by reason of custom, and the question in each case is whether the custom has been established. (*See, J.*)

MAHOMEDAN LAW.

an alienation of a specific joint property; they may well confine their suit to a partition of the particular portion which is in possession of the alienee. There is no reason why the principles which apply in the case of partition decrees in suits for a general partition cannot equally apply to a suit for partial partition. The alienee is entitled as a defendant in the suit of the co-sharers to

er and alteration of character of part—
only Act, S. 2—Operation of. *See*
T. S. 2. 1938 P.W.N. 144.
—Prompt dower—Wife's right to, before

claim prompt dower before consummation
(*After Ahmad, J.*) MT. PUKHRAJ
JAYAT ALI SHAH.

178 I.C. 182-A.I.R. 1938 Pesh. 72.

—Dower—Shia law—Father contracting marriage

1938 A.W.R. (P.C.) 32-1938 A.L.J. 131-

173 I.C. 1-47 L.W. 227-

A.I.R. 1938 P.C. 80-(1938) 1 M.L.J. 468 (P.C.).

—Co-heirs—Realisation of dower decrees from non
talaqdari property—Talaqdari property if liable to con-
tribute. *See* CONTRIBUTION—LIABILITY FOR.

1938 A.W.R. (P.C.) 138-

A.I.R. 1938 P.C. 169 (P.C.)

means of his own, the father is liable for the dower,
cannot be required to conform to a particular feature of
the general law nor should it be interpreted in the light

purchased by him—Partial partition—Suit for—Right
of co-sharers

which enlarges the right of the donor to improve the
security in respect of dower, an important purpose, must

the case of an immediate vendor would and ought to
apply in the case of a vendee if
well established that an alienee
ask for separate possession of
him if it forms part of the
right is to ask for a decree
and such joint possession, would
along with the other members of the family If

in their
ate pos-
are not
there is

him, attornment by the tenants to the donee would be a
sufficient delivery of possession. If no such attornment
takes place, the delivery of the deed of gift to the donee
is not sufficient to validate the gift. (*Bhida, J.*) SHEF
DAD v. MT. ZAFAR JAN. 39 P. P.

MAHOMEDAN LAW.

Gift—Gift of properties to two brothers—Estate taken—Joint tenancy or tenancy in common.

A gift of properties to two Mahomedan brothers makes them tenants-in common and not joint tenants in the sense known to English law. That kind of joint tenancy is unknown to the Mahomedan Law and the creation of that kind of interest is not likely to be intended by a Mahomedan donor. (*Varadachariar and King, J.J.*) KASIM ALI v. RAYNA MANICKA 1938 M.W.N. 403—A.I.R. 1938 Mad. 677.

Gift—Marz ul-maut—What constitutes—Death due to heart failure after delivery—Relinquishment of dower debt—Validity.

It is not a correct view in Mahomedan Law to think

that death will be the result. Where a Mahomedan lady had given birth to a child, relinquished her dower debt and died suddenly four or five days later of heart

fa
174 I.C. 485—10 E.A. 584—1938 A.L.E. 287—1938 A.W.E. 1 (H.C.)—1938 A.L.J. 145—A.I.R. 1938 All. 145.

Gift—Validity—Gift of life-interest.

is a limited interest in the property and should not be extended to the latter class of cases.

NAZIRUDDIN v. KHAIRAT ALI. 1938 O.A. 10—10 E.O. 174—1937 O.W.N. 1211—A.I.R. 1938 Oudh 51.

Guardianship—Custody of minor—Loss of right of mother marrying one not within the prohibited degree of relationship to the minor.

The proposition cannot be disputed that a female including the mother of a Mahomedan child who is otherwise entitled to the custody of the child, loses the right of custody, if she marries a person not related to the child within the prohibited degrees, for example, a stranger. (*Harris and Mista, J.J.*) KUNDAN v. AISHA 1938 A.L.J. 982—BEGAM.

1938 A.W.E. (H.C.) 698.

Guardianship—De facto guardian—Alienation by—Powers.

A de facto guardian has no power under the Maho-

MAHOMEDAN LAW.

Guardianship—De facto guardian—Mother selling inherited zamindari property with tenant.

The settlement of agricultural land forming part of the zamindari property inherited by a Mahomedan widow and her minor son, by the mother acting as de facto guardian of her son, with a tenant for agricultural purposes does not amount to an alienation or transfer of the minor's interest in the immovable property. It is purely an act of management and not a transfer of the minor's proprietary interests. (*Bennet, A.C.J. and Verma, J.*) TAHAD ALI v. ISRAR. 1938 A.W.E. (H.C.) 788—1938 A.L.J. 1110—1938 E.D. 910.

Guardianship—De facto guardian—Power—Bond by elder brother on behalf of himself and his minor

each sharer undertook to pay a portion of the debts of the deceased and an elder brother was shown as guardian for his minor brother, who to pay off his as well as a bond, of the elder (J.J.)

NAZIRUDDIN ASHRAFF v. KHARAGNARAIN. 177 I.C. 802—5 B.R. 17—11 B.P. 186.

Guardianship—Marriage of minor—Right to act as guardian for—Rule.

Residuary. In default of paternal relations, the right or aunt and bited degrees. v. MUHAM. 4 B.R. 825—11 B.P. 153—18 Pat. L.T. 778—1938 P.W.N. 656—A.I.R. 1938 Pat. 604.

Legitimacy—Acknowledgment—Scope of doctrine. Where legitimacy cannot be established by direct proof of a marriage, acknowledgment is recognised by the Mahomedan Law as a means whereby marriage of the parents or legitimate descent may be established as a matter of substantive law. But where illegitimacy is proved beyond doubt by reason of the marriage of the parents being either disproved or found to be unlawful, a child of that marriage cannot be legitimised by acknowledgment. In particular, a child born of fornication, adultery or incest can never be legitimated by any kind of acknowledgment by the father. (*N.C. Ghose and R. C. Mitter, J.J.*) MOHAMMAD HANIF v. BADARANESSA. 42 C.W.N. 272.

Marriage—Minor girl entering into contract of marriage with father's assent—Validity of marriage—

was past the age of d the age of puberty, h the consent of the ad not expressed con n behalf of the bride ge is not a nullity out l can avail herself of s, J) Sm. JOYGUN- BSWAS.

I.L.R. (1938) 1 Cal. 139—174 I.C. 632—

JAKIRALL. 1938 N.L.J. 409

MAHOMEDAN LAW.

10 B.C. 700=42 C.W.N. 69=
A.I.R. 1938 Cal. 71.

—*Marriage—Minor girl—Option of puberty—Right to exercise—When lost—Delay after becoming aware of right—Effect of.*

When a marriage is contracted for a minor Mahomedan girl by any guardian other than her father or father's father, the minor has the option to repudiate the marriage on attaining puberty.

It would be lost if, after she is informed of the marriage, she does not exercise an unreasonable delay. The right to repudiate it, however, a right which may be exercised by the girl.

Mahomedan Law, she at once repudiates the marriage, and brings a suit for dissolution of marriage without any unreasonable delay, it must be held that the right of repudiation is duly exercised and the marriage is dissolved. (*Fazl Ali and Chatterji, J.J.*) **AYESHA v. MUHAMMAD YUNUS**

177 I.C. 514=
11 R.P. 153=4 B.R. 825=10 Pat.L.T. 778=
1938 P.W.N. 656=A.I.R. 1938 Pat. 604

—*Marriage—Option of puberty—Time limit—Effect of exercise of option.*

The rule of Mahomedan Law respecting the option of puberty is that a girl who attains puberty, repudiates her marriage at any time after she comes to know of the marriage, the marriage ceases to be a marriage and must be treated as void.

Judge del.

Under the Mahomedan law a *de facto* guardian has no right to acknowledge a marriage on behalf of the girl.

1938 M.W.N. 671=A.I.R. 1938 Mad. 838=
(1938) 2 M.L.J. 251

—*Pre-emption—Ceremonies—Talab-i-shad—Invocation of witnesses—If essential.*

In order to establish a right of pre-emption the Mahomedan Law requires that the ceremonies connected with *talab-i-muwafat* and *talab-i-shad* must be performed.

or otherwise to specifically invoke them to be witnesses and the absence of proper invocation of witnesses is fatal to the right of pre-emption. 52 A. 1005, not followed (*Derbyshire, C.J. and D.N. Atter, J.*) **PACHUMUD DIN v. ABDUL GAFFUR**

42 C.W.N. 300
—*Sajjadanashin—Meaning—Duties of—Succession—Rules governing*

mutawalli has charge of its temporal affairs and cases both the offices may be combined in one person. The succession to the office depends on rules if any made by the founder and in their absence by usage (*Sir Shadi Lal, J.*) **MAULE SHAH v. GHANE SHAH**

48 L.W. 57=

MAHOMEDAN LAW.

175 I.C. 454=42 C.W.N. 1018=1938 M.W.N. 751=
1938 O.L.R. 319=1938 M.W.N. 688=
1938 P.W.N. 627=11 R.P. 28=19 Pat.L.T. 611=
40 P.L.R. 837=1938 A.L.J. 803=
1938 A.L.R. 566=4 B.R. 730=40 Bom.L.R. 1071=
1938 O.A. 702=1938 A.W.R. (P.C.) 202=
A.I.R. 1938 P.C. 202=(1938) 2 M.L.J. 239 (P.C.).

—*Succession—Debts of deceased—Alienation for Apportionment of Declaration of their proportionate share*

plaintiffs some of their shares. The deceased transferred the property and further the defendant transferees are in no way creditors of the estate for they dealt with their transferors as the sole owners of the property and the money was advanced to them per-

a contention that they could not be given such a declaration unless they contribute their proportionate share of the money advanced to pay off the debts of deceased.

Held, that there was no debt due from the estate as it had been discharged by the defendant heirs who transferred the property and further the defendant transferees are in no way creditors of the estate for they dealt with their transferors as the sole owners of the property and the money was advanced to them per-

1938 A.W.R. (H.U.) 40=1937 A.L.J. 1320=
A.I.R. 1938 All. 182

—*Succession—Debts of deceased—Sale by heirs—Right of creditor to follow property.*

The creditor of a deceased Mahomedan cannot follow his property in the hands of a *bona fide* purchaser for value from his heirs. (*Bhida, J.*) **MOHAMMAD AKBAR**

39 P.L.R. 974 (1)
Impartible estate—Holder leaving wife and daughter—Daughter predeceasing mother—Collaterals, if excluded by mother.

Where a Hanafi Mahomedan dies leaving a will in favour of his wife and daughter in respect of his impartible estate, and the daughter predeceases her mother, and no particular custom is proved and the rule of primogeniture is held not to apply, collaterals who come in as residuaries do not get anything which may be left sharer has had her share. The necessary result is that the Mahomedan Law is increased

—*Takia—What is*

v. NHANE SHAH. 175 I.C. 454=
48 L.W. 57=42 C.W.N. 1018=1938 M.W.N. 751=
1938 O.L.R. 319=1938 M.W.N. 688=
1938 P.W.N. 627=11 R.P. 28=19 Pat.L.T.

MAHOMEDAN LAW.

40 P.L.R. 837=1938 A.L.J. 803=
1938 A.L.R. 566=4 B.R. 730=40 Bom.L.R. 1071=
1938 O.A. 702=1938 A.W.R. (P.O.) 202=
A.I.R. 1938 P.O. 202=(1938) 2 M.L.J. 239 (P.O.).
Wakf.

See also MUSSALMAN WAKF ACT (XLII OF 1923)
AND MUSSALMAN WAKF VALIDATING ACTS.

Adverse possession.

Creation of.

Dedication.

Genuineness of intention.

Management.

Mosque.

Mutawalli.

Right to sue.

Sajjadanashin.

Sale under Court's order.

Validity.

—Wakf—Adverse possession of wakf property—
Muslims and non-Muslims.

Per *Young, C. J.*—The proposition of law that when a wakf is created all proprietary rights of men are extinguished in the property so dedicated, applies only

to the property so dedicated.

Per *Din Mohammad, J.*—The British Courts in India cannot ignore the provisions of the Mahomedan Law altogether while dealing with a mosque and the special features which it possesses and the peculiar privileges which it enjoys are always to be determined under the Mahomedan Law and under no other law even though one of the parties to the suit before them may be a non-Muslim. (*Young, C. J., Bhide and Din Mohammad,*

MAHOMEDAN LAW.

the site of the proposed mosque and building, or that the expenses of their execution should be met from any particular fund:

Held, that there was no declaration of wakf by the deceased. (*Roberts, C. J. and Dunkley, J.*) RAHIMA BIBI v. S. MUSTAFA. 178 I.C. 83=

A.L.B. 1938 Rang. 264.

—Wakf—Creation of—Provision in will for holy places and for the poor after extinction of legalised family—If creates wakf.

A Mahomedan will directed the legatee and his heirs to pay yearly a certain sum to the spiritual preceptor of the testatrix and a certain sum for fatbas, and stated that this arrangement should continue as long as the descendants of the legatee survived and after that the Government should take the estate under its management and after making the above mentioned payments should pay one-third of the profits to Mecca, one-third to Medina and one third to poor Mahomedans of Oudh.

Held, that the payments to the spiritual preceptor and for fatbas at the most might be a charge on the estate but they could not be construed as a wakf, and that the provision for the holy places and for the poor being con-

and Hamilton, J.J.) SRI RAM v. MAHOMED ABDUL RAHIM KHAN 172 I.C. 882=1938 O.L.B. 44=

1938 O.A. 86=1938 O.W.N. 67=

10 B.N. 200=A.L.B. 1938 Oudh 69.

—Wakf—Creation of—Mutation not made properly—If affects validity of wakf.

If the deed of wakf was validly created, then the mere fact that subsequently members of the family of

mutation made in

in khewats was

Act (U.P. Act 19

is a matter which

the validity of the

LIMUNNISA BIBI

i=11 B.A. 173=

338 A.L.B. 709=

R. 1938 All. 485.

—Wakf—Dedication—Definite area of land dedicated for use as graveyard—Presumption as to whole land.

Once it is found that a certain definite area of land has been dedicated for use as a graveyard, it must be presumed, in the absence of any proof that the dedication was limited, that the whole of the land was set apart to be used solely for the purpose of burying the dead. (*Coldstream and Din Mohammad, J.J.*) IMAM BAKHSH MUNAWAR DIN v. NARASINGH PURI. 175 I.C. 1005=11 B.L. 148=

A.I.B. 1938 Lah. 246.

—Wakf—Dedication—Burial ground—Inference from user.

The fact that certain plots of land were described in the revenue records as graveyard and had been in exist-

ence as kabristan by

itself presumptive

apart for use as a

not by dedication the

ndan community had taken no

owner's taking need from the

m and Din Mohammad J.J.)

AWAR DIN v. NARASINGH PURI.

175 I.C. 1005=11 B.L. 148=

A.I.B. 1938 Lah. 246.

Where a statement in the deed was: 'As long as I am alive I shall remain the mutawalli of the property made a wakf of and shall abide by all the conditions laid down in this deed of wakf'. It was held that this statement amounted to a statement that the possession of the executant ceased as a private owner and his possession began as a mutawalli. (*Bennet and Verma, J.J.*) ALIMUNNISA BIBI v. MOHAMMAD ABDUR RAHMAN. 1938 A.W.R. (H.C.) 479=11 B.A. 173=

177 I.C. 205=1538 A.L.B. 709=

1938 A.L.J. 727=A.I.B. 1938 All. 485.

—Wakf—Creation of—Necessity—Facts to be proved to show declaration.

Whether a dedication was made or not is a question of fact, to be proved in the same way as any other fact, and it is for the Court to decide in each case whether the evidence adduced suffices to prove that the thing is absolutely certain, and that is that create a wakf, there must be a dedication of property to the charitable purpose. Where the deceased on

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for

MAHOMEDAN LAW

—*Wakf—Dedication—Graveyard—Inference from user.*

number of graves in a large town might not be held to constitute a graveyard. Where from the number of graves on a plot of land it is clear that it must have been used as a graveyard for a considerable number of years and there has never been any attempt by any one to use this land for any purpose than that of a graveyard, the Court is justified in coming to the conclusion that this is a graveyard and one may legitimately infer that there is a presumption of dedication or of a lost grant. (*Zia ul Hasan and Hamilton, J.J.*) QADIR BAKHSI v. SADDULLAH, 173 I.C. 260 = 10 R.O. 211 = 1938 M.L.R. 60 = 1938 O.A. 116 = 1938 O.W.N. 130 = A.I.R. 1938 Oudh 77

—*Wakf—Dedication—Proof of intention.*

In determining whether a wakf was created or not the real point for determination is whether the wan intended to dedicate his properties then absolutely and for ever. These are the essential requisites of a valid wakf. If the intention to make the wakf can be gathered from the declaration taken as a whole and the surrounding circumstances, the mere fact that the wakf does not subsequently act according to the terms of the wakf will not invalidate the wakf. Where the intention is clear from the surrounding circumstances it is unnecessary to look into the subsequent conduct to find out the intention. If however the intention of the person executing the document is not clear and the declaration and the surrounding circumstances are equivocal, subsequent acts and conduct if they throw any light on the real intention, may be looked into. A document began with a declara-

ever as wakf (*Nasim Ali and B.K. Mukerjee, J.J.*) JONABALI BARDAR v. SABHA KHATUN

MAHOMEDAN LAW.

—*Wakf—Dedication—Will—Construction—Reiteration of right of residence to heirs—If offends rule of*

rights of relations, it was held that on a proper construction of the will in question there was a valid and effective dedication for the purposes specified. It was further held that the provision for the residence of the testator's heirs was not obnoxious to the rule of Shia law which requires a wakf to divest himself of all interest in the property and in its usufruct. (*Sir George Rankin.*) ALI BEGAM v. BADR UL-ISLAM ALI KHAN, 65 I.A. 198 = I.L.R. (1933) Lah. 383 = 1938 A.W.R. (P.C.) 131 = 174 I.C. 870 = 1938 A.L.J. 825 = 40 Bom.L.R. 835 = 42 Q.W.N. 845 = 1938 O.L.R. 278 = 1938 P.W.N. 470 = 67 Q.L.J. 266 = 48 L.W. 1 = 10 R.P.O. 290 = 4 B.R. 593 = 1938 M.A. 958 = 1938 A.L.R. 480 = 40 F.L.R. 740 = 1938 M.W.N. 767 = 1938 Q.W.N. 688 = A.I.R. 1938 P.C. 184 = (1938) M.L.J. 1 (P.C.)

—*Wakf—Genuineness of intention—Language—If, a test.*

No distinction in form can be made between a deed of wakf which the executant does not intend should be brought into force and one which he intends to be genuine. (*Bennet and Verma, J.J.*) ALINUNNISA BIBI v. MOHAMMAD ABDUR RAHMAN, 177 I.C. 205 = 11 B.A. 173 = 1938 A.W.R. (H.M.) 479 = 1938 A.L.R. 709 = 1938 A.L.J. 727 = A.I.R. 1938 All 485.

—*Wakf—Management—Wakf surrendering his mutawalliship and right of management—Power to revoke.*

Where a person declares certain property to be wakf permanent mutawalli at position by reason which he surrenders

the jamiat or the registered corporation which subsequently replaces it, of

—*Mosque as institution*

J.—A mosque as an institution consisting of stones, person capable of suing distinction between a mosque as an institution or as a juristic person which can own property, and a mosque as a building; the mosque as a building may be owned by the institution (juristic person) or by any one else who may acquire adverse possession over it. The mosque as an institution is, therefore, entitled to sue for possession of the building of the mosque or its site for the benefit of all persons interested in the institution (*Young, C.J., Shidh Din Mohammad, J.J.*) MASJID SHAHID GAN

MAHOMEDAN LAW.

SHIROMANI GURDWARA PARBANDHAK COMMITTEE,

AMRITSAR. 175 I.C. 945=11 B.L. 91=

40 P.L.R. 319=A.I.R. 1938 Lah. 369 (F.B.).

—Wakf—Mosque—Public character—Proof—

Something more than the mere appearances of a mosque are needed before it will become entitled to be treated as a mosque for all time. There must be proof of dedication

1938 O.A. 722=A.I.R.

—Wakf—Mutwalli—Decree against wakf estate.

It is true that a decree passed against *mutwallis* "as such" will not necessarily bind the wakf estate, but there can be no manner of doubt that in certain circumstances a decree passed in a suit against the *mutwallis* of a wakf estate would affect the wakf property. The question whether the decree affects the property of the wakf will depend upon the facts of the case in which the decree is passed. (*Sen, J.*) FAZAL RAHAMAN v. ABDUL RASHID. 43 O.W.N. 15

—Wakf—Mutwalli—Power—Permanent lease.

Under the Mahomedan law a *mutwalli* is not entitled to make a permanent lease of property which is wakf (*Bennet and Verma, J.J.*) ALIMUNNISA BIBI v. MOHAMMAD ABDUR RAHMAN. 177 I.C. 205=

11 B.A. 173=1938 A.W.R. (H.C.) 479=

1938 A.L.R. 709=1938 A.L.J. 727=

A.I.R. 1938 All. 485

—Wakf—Mutwalli—Right of appointment—Nature of.

There is in law no absolute right to be appointed *mutwalli* and it is not a matter of property. (*Ameer Ali, J.*) WAZIR ALI v. LADLEY BEGUM. 177 I.C. 417=11 B.C. 244=

A.I.R. 1938 Cal. 437.

—Wakf—Right to sue—Protection of wakf estate from waste—Private wakf.

Persons interested in a private wakf are entitled to bring
Who
of a
wakf
man
tain
affect
sale

tion made by a Sajjadanashin of his share in the offerings cannot bind his successors. (*Sir Shadi Lal.*)

ALTAF I.
KHAN.40 P.L.R.
32 S.I.

MAHOMEDAN LAW.

—Wakf—Sajjadanashin—Right to articles presented for use of tomb.

The qabarposhes, as well as gold or silver vessels or implements presented for the use of the tomb must be tomb committee on behalf of the tomb; and Sajjadanashin nor the Khadims are entitled

ate in those offerings. (*Sir Shadi Lal.*)

JSSAIN v. DIWAN SYED ALI RASUL ALI

1938 A.W.R. (P.C.) 37=

1938 O.W.N. 253=1938 A.L.R. 126=

10 B.P.C. 200=40 P.L.R. 253=4 B.E. 312 (2)=

1938 M.W.N. 618=32 S.L.R. 363=

40 Bom.L.R. 755=172 I.C. 985=1938 B.L.R. 92=

47 L.W. 221=A.I.R. 1938 P.C. 71 (P.C.).

—Wakf—Sale under Court's order—Protection of purchaser.

erty protects
er person or
utwalli in the
and to whom
permission to sell was granted, makes not the slightest difference. (*Ameer Ali, J.*) WAZIR ALI v. LADLEY BEGUM. 177 I.C. 417=11 B.C. 244=

A.I.R. 1938 Cal. 437.

—Wakf—Validity—Settlor's object only to save property from creditors.

ed property was sufficient to cover the debt and no evidence in support of the *bona fides* of the wakf was given.

Held, that the settlor's object was only to save his

1938 O.L.R. 510=A.I.R. 1938 P.C. 280 (P.C.).

—Will—Form of—Expression of intention of testator—Declaration forming basis of draft—Sufficiency of.

Granted that the will of a Mahomedan need not be drawn in form and granted that it need only be a declaration of the testamentary intentions of the testator, it would be imperative that there should be evidence which

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tled to receive

Hence aliena-

MAHOMEDAN LAW.

1938 M.W.N. 699—A.I.R. 1938 Mad. 616.
(1938) 1 M.L.J. 441.

Will of entire property—Probate—Duty of Court
See SUCCESSION ACT, S. 213. A.I.R. 1938 Nag. 173.

Will—Life estate—If can be created.

Under Mahomedan Law a life
when immediately followed by a
will—*Hasan and Hamilton, J.J.*

ABDUL RAHIM KHAN.

1938 O.L.R. 44—1938 O.A.

10 E.O. 200—

Will—Life estate—Validity.

The provision of the Mahomedan Law
prohibiting repugnant to the grant is invalid
only and not to nullify a bequest of a life estate or of

MALABAR LAW.

The Court has always got the power to vacate or rescind
such an order which should never have been made. Nor
would such an order extend the period of minority to 21
years under S. 3 of the Majority Act (*Davis, J. C. and*
HOLANDAS GIDUMAL v. SADHUMAL
33 S.L.R. 215.

COMPENSATION FOR TENANTS
IMPROVEMENTS ACT (OF 1900), S. 5 (2)—

can override general law of limitation—

AMIRAT ALI. 174 L.U. 384—1934 O.W.N. 1444—
1938 O.A. 10—10 E.O. 174—A.I.R. 1938 Oudh 51.

Will—Revocation—Registration of will—Com-
munication by testator to solicitors to draft a codicil as
per his instructions—Communications not signed by
testator—Codicil not completed—Communications
whether operate as codicil and revoke part of his will
See WILL—REVOCATION (1938) 1 M.L.J. 444.
MAJORITY ACT (IX OF 1875), S. 2—Scope and
operation of—Dower—Mahomedan wife below 18 years
age—Karnama foregoing part of dower and changing
character of balance from prompt to deferred—Validity
of—If to be judged by Act or by Mahomedan law.

S. 2 of the Majority Act only governs the performance
of marriage or effecting of divorce by persons who,
though not major according to the Act, are so accord-
ing to their personal law. But the relinquishment by a
Mahomedan wife of the whole or part of her dower
fixed at the time of the marriage or changing its
character from prompt into deferred does not fall
within the exception provided by S. 2 of the Act. Once
a marriage is performed, and the dower settled, the
dower becomes a property of the wife like any other
property belonging to her. It is a debt payable to her
and any transfer or relinquishment of the same, whether
in whole or part, is not a matter in any way connected
with marriage, and such an act must be governed by the
ordinary law of the land. The operation of the section
cannot be extended beyond what is specified therein.
Consequently an *ekrarnama* executed by a Mahomedan
wife who is a minor under Act, but a major under the
Mahomedan law whereby she surrenders a portion of

was not executed the tenant continues in possession.
Where a successor of the *Jenmi* brought a suit more than
12 years after the decree in the prior suit, for ejectment
of the tenant, on a plea that it was barred by Art. 139
of the Limitation Act and by *res judicata*.

Held, that the suit was not barred by Art. 139 as
under S. 5 (2) of Malabar Compensation for Tenants
Improvements Act a tenant continuing in possession
after determination of tenancy held possession during
such continuance as a tenant subject to the terms of the
lease.

Held, further, that there could be no bar of *res judi-
cata* in such a case as there neither in fact was, nor in
law could be a decree in favour of the *Jenmi* in the prior
suit. (*Venkataramba Rao and Abdur Rahman, J.J.*)
GOVINDAN v. D'SILVA 47 L.W. 236—

1938 M.W.N. 241—A.I.R. 1938 Mad. 581—
(1938) 1 M.L.J. 313.

MALABAR LAW—Tarwad—Karnavan—Assign-
ment of lands subject to *kanom* to junior member in lieu
of maintenance with power to redeem *kanom*—Validity.

If an assignment by a *Karnavan* had been in favour
of a stranger by way of a *Melcharth* possibly it may be
open to objection that a *karnavan* by assigning away the
right to redeem long before the period of redemption,
would not be acting prudently in the interests of tarwad
and would be unnecessarily fettering the exercise
of the discretion of succeeding *karnavan* who at
the time of the expiry of the period should take the
circumstances then existing as to the desirability of
granting a *Melcharth*, but if by means of a family

S. 3—Scope of—If affected by S. 19 of the Guar-
dians and Wards Act—Appointment of guardian for
minor having father alive—Legality—Period of
limitation—If extended

In order to extend the minority of a person to 21
years under S. 3 of the Indian Majority
in the first instance be a lawful appoint-
ment. An appointment which is not lawful
void cannot extend the period of minority.
Guardians and Wards Act specifically prohibits the
Court from making an appointment of
person whose father is alive and who is
guardian. An appointment of guar-
dian is not a lawful appointment, as
cannot be made under the Guardians and Wards Act.

Tarwad—Karnavan—Powers of—Debt incurred
by *karnavan*—Liability of tarwad—Assent of senior
anandiratan—Effect—Presumption of necessity

The *karnavan* of a Malabar tarwad is the accredited
agent of the tarwad and he represents his tarwad in all

loan by the *karnavan*, a representation believed in by the
purpose
of
adopt it in cases where the contract

MALABAR LAW.

the karnavan in his capacity as karnavan but not for a necessary tarwad purpose. The concurrence of the seniormost anandravan in a transaction of the karnavan raises a *prima facie* presumption of necessity, and it will be for the other members who seek to exempt the tarwad from liability to disprove the case of necessity. (*Venkataramana Rao, J.*) KESAVAN NAMBUDIRI v. LAKSHMI VARASYAR. 48 L.W. 803=

Act—Binding nature as against tarwad—Test—Onerous terms in mortgage—Power of Court to reduce liability of tarwad.

Kuri chit transactions are well known in Ma and karnavans of Malabar tarwads have been

prudence and an honest exercise of discretion by the karnavan in the light of all the circumstances of the case. Where a karnavan enters into a Kuri chit as representing the tarwad and not in his personal capacity, and the stakeholder admits him *bona fide*, as representative of his tarwad, to membership of the Kuri, a mortgage bond executed by the karnavan in respect of future subscriptions to the Kuri after bidding his chit and getting the bid amount, charging the tarwad properties as security, is binding on the tarwad and its properties, when the transaction appears on the whole to be a prudent one for the karnavan to enter into. It is, however, well within the power of Court, when dealing with such a mortgage, to investigate the necessity for imposing onerous terms on the tarwad and to reduce the terms to what may seem reasonable in the circumstances. (*Varalachariar and King, JJ.*) ANANTHA PATTAR v. PADMANABHA PANIKKAR.

1938 M.W.N. 61=47 L.W. 879= A.I.R. 1938 Mad. 468=(1938) 1 M.L.J. 79.

Tarwad—Karnavan—Powers of—Maintenance allotment to thavashi—If binds succeeding karnavan—Power to alter.

It is open to the karnavan of a Malabar tarwad to make grants of land in lieu of maintenance to the junior members of the tarwad and any such maintenance arrangement entered into by the karnavan in favour of

MALICIOUS PROSECUTION.

Tarwad—Property—Thavashi—Acquisition by karnavan in names of members of his thavashi—Treatment of such property as thavashi property—Several succeeding karnavans acquiring and not claiming same on behalf of tarwad—Inference—Right of new karnavan after lapse of many years to claim property as tarwad property—Acquiescence.

Where the karnavan of a tarwad who is also the

the tarwad, it is not proper to allow a new karnavan after the lapse of many years to reopen the transactions

conduct is that
be thavashi and
the tarwad as a
Newman, JJ.)

ANBU NAIR v. UTHA AMMA.

176 I.C. 733=10 R.M. 153= 1937 M.W.N. 1251=A.I.R. 1938 Mad. 202.

Tarwad—Thavashi—Legal status of—Acquisition of property as such—Relinquishment of property in favour of thavashi—Validity—Properties standing in names of members of thavashi—Compromise decrees declaring same as belonging to thavashi—Effect of.

A thavashi consisting of a female and her descendants in the female line, as a sub-division of a tarwad, is a legal entity, capable of holding property as a distinct unit; and properties can be validly relinquished in favour of a thavashi. Such a relinquishment can be effected by means of a compromise in a suit, to which the members of the particular thavashi are parties, declaring that the properties standing in the names of certain members of that thavashi belong to the thavashi. That amounts to a relinquishment in favour of the thavashi of the rights, if any, of the individual members. (*Venkataramana Rao and Newman, JJ.*)

ANBU NAIR v. UTHA AMMA.

176 I.C. 733=10 R.M. 153= 1937 M.W.N. 1251=A.I.R. 1938 Mad. 202.

MALABAR TENANCY ACT (XIV OF 1930), S. 33—Applicability—Usufructuary mortgage—Lease back to mortgagor—Later sub-leasing *pari to another*—Right to apply under S. 33—"Tenant".

He mortgages his property usufructually back of that property from the mortgagor sub-leases a part of it to a tenant as defined by the Malabar therefore entitled to apply under Although the mortgage and the lease respects be considered to be one transaction, yet they undoubtedly operate separately, and

the maintenance of thavashi, it cannot be assumed the succeeding karnavan on the ground that it may not have been necessary at that time. (*Venkataramana Rao, J.*) MAKKAM AMMA v. KUNHI KALAPPA KURUP. A.I.R. 1938 Mad. 289.

knowledge. The mere fact that the judgment of the Criminal Court ended in favour of the plaintiffs does

MALICIOUS PROSECUTION.

not relieve them of the necessity of proving that the complaint was false to the defendant or was without reasonable or probable cause, the burden always initial

when the plaintiff in such a case has been acquitted by the Criminal Courts, he should be deemed to be innocent of the charges brought against him by the defendants. But from this it does not follow that defendant's version of the incident was wholly false or if known it to be false. The defendant true in every single respect and yet still have been innocent. (*Bois, J.*)

DICHAND V. VISHWAKAO PUNDALIK.

A.I.B. 1938 Nag. 522.

—Criminal Court judgment—Reasoning of—If relevant

In the absence of *res judicata*, the reasons upon which a judgment proceeds are entirely irrelevant in a subsequent

—Damages—Measure of—Considerations—Duty to give best proof available.

Law has not laid down what shall be the measure of damages in an action for malicious prosecution. The measure is vague and uncertain variety of facts, conduct of the

—Defence—Honest belief in guilt of accused—

IDRIS ABDULLAH

10 R S 205—A.I.R. 1938 Sind 11

—Essentials to be proved—Existence of malice—Question of fact—Want of reasonable and probable cause—If itself evidence of malice

In order to succeed in a case of malicious prosecution, the person suing has to prove that he was innocent and his innocence was pronounced by a tribunal, that there was a want of reasonable or probable cause for the prosecution and that the proceedings were initiated by a malicious spirit, that is from indirect or improper

MALICIOUS PROSECUTION.

malice is purely a question of the circumstances of parties, and the absence of malice is not by itself sufficient. (*Kanwar, J.C.*)

—MALH.
O. 407=10 R S. 205=
A.I.R. 1938 Sind 11.

—Aggregate

A Corporation aggregate would be liable in an action for damages for malicious prosecution, if a like action against its agents or servants acting with authority or within the scope of their employment would have been

A.I.R. 1938 Cal 829.

—“Prosecution”—Absence of evidence showing that statements made by defendant led to prosecution—Effect.

Inasmuch as in India prosecution is not private, an action for malicious prosecution will lie against even a private individual, if he is proved to have given information to the authorities which naturally leads to prosecution.

—“Prosecution”—Meaning of—When commences—Prosecution by police—Complainant engaging and paying Counsel—Liability of

Malicious “prosecution” begins when proceedings are

KODULAL V. KALLULAL

40 N M 281

—“Prosecution”—When commences—Initiation and

ABDULLAH.

32 S L R 1=173 I C 407=

10 R S 205—A.I.R. 1938 Sind 11.

—Reasonable and probable cause—Enquiry into facts—Duty of prosecutor.

If in any case the facts known to the world be prosecutor reasonably are such as to cause him fairly and honestly to conclude that the accused is guilty of the offence, there is no law which compels him to procure further enquiries in order to ascertain whether or not further information obtainable in support of

MALICIOUS PROSECUTION.

secution on which he has decided. Further, where the facts available to the prosecutor at or before he puts the criminal law in motion make out a *prima facie* case against the accused, he is under no duty to ascertain whether there is a defence to the charge. (*Mitter and Biswas, J.J.*) **CHATRA SERAMPORE CO-OPERATIVE CREDIT SOCIETY, LTD. v. BECHARAM.**

42 C.W.N. 1219 = A.I.R. 1938 Cal. 829.

—*Reasonable and probable cause—Proof.*

An honest belief in the guilt of the plaintiff based on reasonable ground is the very essence of the defence to a suit for malicious prosecution. The plaintiff sold certain land to the defendant. The plaintiff expressly refused to guarantee good title with regard to anything which might have happened before the land came into his possession. Before the actual date of transfer he had told the defendant to make his own enquiries, but the

MARRIED WOMEN'S PROPERTY ACT S. 6.

earlier, the policy must be taken to be for the benefit of the wife of the assured, although the *verba impissima* "the policy is for the benefit of the wife" are not to be found in the policy. A trust in favour of the wife attaches itself to the policy under S. 6 of the Married Women's Property Act, from the very moment of its birth, although the wife is not entitled to claim anything under the policy unless and until the event referred to in the policy happens. It is not open to a creditor of the assured to treat it as the property of the assured, (*Pandurang Row, J.*) **KANNAYALAL v. SUBBARAYA CHETTY.** I.L.R. (1938) Mad. 867 = 47 L.W. 130 = 1938 M.W.N. 49 = A.I.R. 1938 Mad. 413 = (1938) 1 M.L.J. 281.

—*S. 6—Applicability—Mere statement in proposal that the object of policy was for 'family provision'.*

tion was due to the malicious intention of the defendant and for some subsidiary purpose. (*Baguley, J.*) **MAUNG OHU KIN v. PALANIYAPPA CHETTYAR**

176 I.C. 765 = 11 B.R. 80 = A.I.R. 1938 Bang. 121.

—*Reasonable and probable cause—What amounts to*

KALANLAL HIRALAL. 176 I.C. 79 = 11 B.N. 34 = A.I.R. 1938 Nag. 32.

—*S. 6—Construction and scope—Trust in favour of wife—When arises—Naming of trustee and making of amount payable to Official Trustee—If condition*

MARRIED WOMEN'S PROPERTY ACT (III OF 1874)—Married woman—Liability on contract.

Under S. 8 of the Married Women's Property Act, apart altogether from the proviso introduced by S. 2 of Act 21 of 1929, before a creditor can obtain a decree against a married woman on her contracts much more has to be done than mere proof of the contract and breach. The question in each case is whether a tract of the married woman was at all covered operative part of the section. (*Ameer Ali, J.*)

MATTER OF GEORGE BRIDGE

I.L.R. (1938) 2 Cal. 239 = 42 C.W.N. 577 = A.I.R. 1938 Cal. 486.

contained a statement that the amount due thereon should be paid to the assured at the expiry of the period of 15 years, or to his wife on the death of the assured if

—*S. 6—"Policy"—Meaning of—Proposal and declaration of assured—If part of the policy—Reference to for ascertaining to whom money is to be paid—Permissibility.*

The word "policy" in S. 6 of the Married Women's Property Act means a document or documents evidencing the contract between the parties and constituting the

contains a provision making the proposal and declaration of the assured part of the policy, then such proposal or is deemed and treated as part of. The Court must therefore in proposal or declaration also to insurance money is payable in a proper does not itself contain any

noted including to whom the money shall be paid. (*Loach, C.J., Madhavan Nar and Varadachariar, J.J.*) **KRISHNAN CHETTIAR v. VELAYUDH ANNAL.** I.L.R. (1938) Mad. 909 = 177 I.C. 119 =

MARRIED WOMEN'S PROPERTY ACT (1874).

S. 6.

A I R

to "self or wife"—Meaning and effect of—If creates trust in favour of wife of assured.

Where the money under a policy of insurance is made payable to "self or wife," the words "self or wife" can

of the assured dying before the policy matures. And there can be a contingent trust under S. 6 of the Married Women's Property Act. (*Leach, C.J., Madhavan Nair and Varadachariar, JJ*) KRISHNAM CHETTIAR v. VELLAYE AMMAL. I.L.R. (1938) Mad. 909 = 177 I.C. 119 = 11 R.M. 249 = 1938 M.W.N. 561 = 48 L.W. 25 = A I R 1938 Mad 601 =

although such settlement was prior to April, 1930 (*Ameer Ali, J.*) GEORGE BRIDGE, *In the matter of*. I.L.R. (1938) 2 Cal. 233 = 42 C.W.N. 577 = A I R 1938 Cal. 486.

—S. 8, proviso—Effect of.
The proviso added to S. 8 of the Married Property Act by S. 2 of Act 21 of 1929 saves it of restraint. But the effective provisions of have not been amended. (*Ameer Ali, J.*) BRIDGE, *In the matter of*.

I.L.R. (1938) 2 Cal. 233 = 42 C.W.N. 577 = A I R 1938 Cal. 486
MASTER AND SERVANT—Contract of service in London—Employment in New Zealand on seven hundred pounds "sterling"—Payment according to English or New Zealand currency. See CONTRACT—CONSTRUCTION. 174 I.L.R. 47 = 47 L.W. 596 = 10 R.P.C. 241 = A I R 1938 P.C. 136

—Dismissal of servant—Ground for—Cumulative effect of acts—If can be taken into account.

In considering the question whether a summary dismissal is justified the position of the employee and

and *Ritwal, JJ*) CHATRA SEKARPORE CO-OPERATIVE CREDIT SOCIETY, LTD v. BECHARAM. 42 M.W.N. 1219 = A I R 1938 Cal. 829.

—Dismissal of servant—Justification for—Ground not known to matter at time of dismissal

MASTER AND SERVANT.

the breach under Petroleum Act 1899 S. 15(c) (*West*). I. 138.

punish a servant by suspension. If a servant is suspended, when there is no power of suspension, he can sue for damages for not being allowed to work, if he was ready to work. If however there is a power to suspend, the

A I R 1938 Cal 759.
—Rights of servant—Wages for period of service
—Servant leaving without notice—Master claiming damages—Procedure.

A monthly servant who leaves service without giving notice is entitled to be paid down to the date when wages were last due but is not entitled to be paid any by the in that leave either he have SSER v.

175 I.C. 105 = 10 R.R. 460 (2) = A I R 1938 Rang. 86.

—Right to wages—Monthly servant leaving service without notice—Right to payment for work done in

whatsoever, should not be able to claim payment for the work that he may have done in the period from the beginning of the month up to the date of his departure being less than a month. (*Mackney, J.*) ETBARI v. BELLAMY. 176 I.C. 526 = 11 R.R. 54 = A I R 1938 Rang 207.

—Salary of servant—Contract to pay X pounds or salary while currency in gold—Gold currency ceasing to exist—Right to claim salary on gold basis

Contracts are expressed in terms of the unit of account, but the unit of account is only a denomination connoting the appropriate currency. Hence, unit of

currency takes its place (*Lord Wright*) OTTOMAN BANK OF NICOSIA v. OHANES CHAKARIAN. 172 I.C. 780 = 10 R.P.C. 141 = A I R 1938 P.C. 26 (P.C.)

—Vicarious liability. See TORTS—VICARIOUS

the action of his servant in breach of the conditions of held that the award of three months salary as dam-
Y. D. 1938—64

MINOR—Contract by guardian.

—Contract by guardian—Liability under—Ratification—What amounts to.

For a valid ratification by a major of a transaction entered into during his minority, there must be after majority and after the late minor has acquired full knowledge of the nature and effect of the transaction, some promise or other act which shows an intentional acknowledgment of his liability for the act done on his behalf during his minority. (*Vizian Bost and Purank, J.J.*) **SADASHO BALAJI v. SHANKAR GOVIND.**

175 I.C. 149=19 R.N. 437=A.I.R. 1938 Nag. 68

—Contract by guardian—Money borrowed for payment of rent due—Liability of minor.

Where a guardian of a minor borrows money for the payment of rent due to landowner which the minor was bound to pay, the minor is liable under the transaction, as the guardian can do what the minor would himself do (*Vizian Bost, J.*) **SADASHO BALAJI v. HIRALAL RAMGOPAL.**

175 I.C. 149=10 R.N. 437=A.I.R. 1938 Nag. 68.

—Debt by guardian—Binding nature—Powers of a guardian.

A guardian as manager can in a proper case bind, charge, encumber, and/or alienate the estate. But if he is not the manager he cannot bind the estate of the minor by any debt contracted. The minor's under S. 68 of the Contract Act is different, is purely a statutory liability arising under certain conditions (*Stone, C.J. and Clarke, J.*) **GARAM TULARAM**

—Debt

ing on the Nature and

Where a passed therec no doubt th: subrogated to her right against the estate of the minors It arises from the principle, that the a right of recourse against the estate of hers may be put in her place again to say, that he has a right to the nity or hen which the mother l estate. (*Venkatasubba Rao and A.*) **NATESA NATTA v. MANIKKA NATTA.**

177 I.C. 756=47 L.W. 175=1938 M.W.N. 103=A.I.R. 1938 Mad. 398=(1938) 1 M.L.J. 181.

—Decree against—Absence of proper representation —Effect—Suit on mortgage executed by Hindu father —Minor son impleaded and represented by father as guardian ad litem—Suit by minor to declare decree not binding on him—Finding that minor had good defence and that guardian did not properly represent minor and did not raise valid defence—Proper decree—Declaration —Order setting aside whole decree and directing re hearing of suit—Legality.

Where certain Hindu minor sons sue for a declaration that „ execu group neces

MINOR—Guardian ad litem.

v. KIDAR THAKUR. 17 Pat. 236=177 I.O. 886= B.R. 37=11 R.P. 191=A.I.R. 1938 Pat. 437.

—Decree against—Gross neglect of guardian—Minor represented by father as guardian—Suit to avoid —Competency—Decree in connection with property—Property in minor's possession—Suit for mere declaration of invalidity of decree—If lies—Specific Relief Act, S. 42.

appointed by the Court, friend, or even the Hindu Law guardian, i.e., his father. But a suit for a mere declaration

property is in the defendant's possession, or for an injunction to prevent the defendant from interfering with his rights in the property. (*Barles and Blackin, J.J.*) **SURESHCHANDRA v. BAI ISHWARI.**

174 I.C. 820=10 R.B. 493=40 Bom.L.R. 127=A.I.R. 1938 Bom. 206.

which a *de jure* guardian can validly do. *A de facto*

interested in the welfare of the minor, the person who makes an alienation or receives a payment is, at the time of the transaction impeached, regarded by common consent as the person who is entitled to act on behalf of the minor. If there is such a general recognition, then, when once that person has consented to act as guardian, it would not be necessary to wait for a series of acts or transactions in the capacity of guardian in order to clothe that person with authority to represent the estate of the minor. It is unreasonable to withhold from a person who has reasonably been recognised by the family as entitled to represent the minor, the power to do those acts which are necessary for and beneficial to

Any payment made to such a person of to the minor would be a valid payment. **J.) HANUMAYANMA v. LAKSHMI.**

1938 M.W.N. 942=48 L.W. 506=38 Mad. 950=(1938) 2 M.L.J. 632.

proceedings — Judgment debtor in the course of—Procedure. **See 1938 O.W.N. 758.**

negligence—Omission

guardian of a minor efence which saves a alienation, is guilty of gross negligence. (*Addison and Din Mohammad, J.J.*) **GHULAM AHMAD v. NAND LAL.**

177 I.O. 101=

minors had a good defence of want of necessity for the

the fathers are concerned, would remain unaffected. (*Wort and Varma, J.J.*) **CHITRADHAR NARAIN DAS**

MINOR—Representation.

11 B.L. 265

—Representation—Minor
 defendant with other relation—Minor
 tenant.

Where a minor was impleaded as a defendant along with his father as well as some other relations whose interest was joint with the minor, it cannot be said that he was properly represented before the Court and that his interests were sufficiently safeguarded by the other members.

MISC.

See

(3) LEGAL PRACTITIONERS ACT, SS. 13

14.

MORTGAGE.

Absence of consideration. See also T.P. ACT, SS. 58 TO 104 AND C.P. CODE, O. 34.

Go mortgagors

Construction

Costs.

Equitable mortgage.

Integrity

Interest.

Keeping alive

Invalidity of substituted mortgage.

Mortgage suit.

Prior and subsequent mortgages.

Priority.

Receiver.

Redemption

Release by mortgagee

Rights of mortgagee

Rights of mortgagor

Sub-mortgage

Subrogation.

Substituted security.

Usufructuary mortgage.

MORTGAGE—Interest.

proving sufficient or insufficient. (*Stone, C.J. and Digby, J.*) SAHEBCHAND MARAKCHAND v. BATTAS-
 RAO RAMJI. 175 I.C. 561=10 B.N. 462=

A.I.R. 1938 Nag. 237.

—Equitable mortgage—Deposit of hole of movable
 machinery—Machinery subsequently becoming immova-

earth become immovable property. It is a well-known principle that the scope of an equitable mortgage does not extend beyond the scope of the title deeds. (*Dalip Singh and Skimp, J.J.*) MADAN LAL v. GANGA BISHAN. A.I.R. 1938 Lab 255.

—Integrity—Breaking of—What amounts to—Suit on prior mortgage impeding subsequent mortgage—Decree—Sale of part of property—Purchase by members of mortgagor's family—Integrity of subsequent mortgage—If broken by such sale and purchase.

In a suit to enforce a prior mortgage a decree was passed for sale. The mortgagors and the subsequent mortgagees who were parties to the suit failed to redeem the prior mortgage with the result that part of the mortgaged property was sold in execution in satisfaction of the prior mortgage and purchased by some members of the family of the subsequent mortgagee. In a suit by the subsequent mortgagees for sale of the remaining property in enforcement of his mortgage the mortgagors pleaded that the integrity of the mortgage was broken up by reason of the execution purchase and that they were therefore entitled to redeem the property piecemeal.

Held, that the property left for the satisfaction of the second mortgage was the only property on which it could operate and that the integrity of the mortgage had in any sense been broken. (*Ayamattullah and Top J.J.*) KABULCHAND v. BADRI DAS.

I.L.R. (1938) All. 63=173 I.C. 130=10 B.A. 463=1938 A.L.R. 87=1937 A.W.R. 1070=1937 A.L.J. 1210=A.I.R. 1938 All. 22.

—Interest—Bond containing independent covenant to pay interest at regular intervals—Suit for personal est.—If can be brought—

176 I.C. 923=A.I.R. 1938 Rang. 65
 —Construction—Mortgage comprising features of usufructuary and simple mortgage—Covenant to pay—Right of sale

In a mortgage where there are certain provisions

Unless there is anything in the decree to show that the normal right of the litigant to recover costs personally against his opponent is taken away, where costs are given against a puisne mortgagee, such costs can be executed personally against the mortgagor, and such right is independent of and exists whether or not O. 34,

A.I.R. 1938 Rang. 113

—Interest—Decree awarding interest till realization—Sale proceeds deposited in Court—Right to interest till confirmation of sale

The amount deposited by the auction-purchaser on date of sale and on the 15th day after the sale

MINOR—Contract by guardian.

Contract by guardian—Liability under—Ratification—What amounts to.

For a valid ratification by a major of a transaction entered into during his minority, there must be after majority and after the late minor has acquired full knowledge of the nature and effect of the transaction, some promise or other act which shows an intentional

MINOR—Guardian ad litem.

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A.I.R. 1938 Nag. 65.

Debt by guardian—Binding nature—Powers of a guardian.

A guardian as manager can in a proper case bind, charge, encumber, and/or alienate the estate. But if he is not the manager he cannot bind the estate of the minor by any debt contracted. The minor's liability under S. 68 of the Contract Act is different, it being purely a statutory liability arising under certain conditions (See *TULARAM*).

Debt

ing on the estate—Creditor's Nature and extent of

Where a debt is incurred by

passed thereon are binding upon

no doubt that a creditor of the mother can claim to be

property is in the defendant's possession, or for an injunction to prevent the defendant from interfering with his rights in the property. (*Barlee and Macklin, JJ.*) *SURESHCHANDRA v. BAI ISHWARI.*

174 I.C. 820 = 10 R.B. 493 = 40 Bom.L.R. 127 = A.I.R. 1938 Bom. 206.

De facto guardian—Power to acknowledge debt. See LIMITATION ACT, S. 21. (1938) 2 M.L.J. 501.

De facto guardian—Who is—Test to decide

debts due to minor.
minor who is validly
ly for the benefit of
in respect of a debt
ablished that that per-
ugh not appointed by
authority of the position

177 I.C. 758 = 47 L.W. 175 = A.I.R. 1938 Mad. 398 =

and that guardian did not properly represent minor and did not raise valid defence—Proper decree—Declaration—Order setting aside whole decree and directing re-

raise valid defences open to the minors, and that the minors had a good defence of want of necessity for the

is, at the common behalf of
ion, then,
when once that person has consented to act as guardian, would not be necessary to wait for a series of acts or transactions in the capacity of guardian in order to clothe that person with authority to represent the estate of the minor. It is unreasonable to withhold from a person who has reasonably been recognised by the present the minor, the power to necessary for and beneficial ment made to such a person of minor would be a valid payment.
ANUMAYANMA v. LAKSHMI.
38 M.W.N. 942 = 48 L.W. 506 = 938 Mad. 950 = (1938) 2 M.L.J. 632.

proceedings — Judgment debtor
attaining majority in the course of—Procedure. See
EXECUTION—MINOR. 1938 O.W.N. 758.

minor

minor
saves a
guilty
d, ff.)

101 =

MORTGAGE—Keeping alive.

intended to be paid to the decree holder immediately on deposit but on confirmation of the sale. It is on confirmation of sale that the auction-purchaser's title to the property purchased by him is declared though it relates back to the date of the sale. Till then, his title is subject to the proceedings that may be taken by persons interested in the property for setting the sale aside. Where therefore a mortgage decree directs the payment of interest on the decretal amount till realisation, the decree-holder is entitled to interest confirmation of sale and not up to sale proceeds are deposited in Court.

RAMCHANDRA MAHOTRAO v. RAMCHANDRA GUJARA.
I.L.R. (1938) Nag. 458 = 173 I.C. 296 =
10 B.N. 295 = A.I.R. 1938 Nag. 54.

—*Keeping alive — Intention — Purchasing property mortgaged to him — subsequent purchasers from him.*

It should always be presumed that in the case of previous mortgages rights intend mortgage alive for his benefit. Though Property Act is not in force in the Punjab principles to be applied are those of the Amended Act of 1929 which must be held in accordance with the principles of justice.

of rent and in execution of the simple obtained therein he had the judgment debt sold and himself purchased the equity of the houses. Z then sold the two houses to a suit against S and N for recovery of his mortgage-money, by sale of the property mortgaged to him by S. N claimed priority over K's mortgage in respect of the two houses purchased by him from K.

to the property purchased by him from K. N was therefore entitled to subrogate and claim priority over R in respect of his own transaction and that N by reason of his holding the position of defendant in the suit could claim to retain possession of the mortgaged property until all his claims were satisfied although he might have lost his right by lapse of time. (*Addison and Din Mohammad, J.J.*) **NIZAM DIN v. RAM SUKH DAS**
A.I.R. 1938 Lah. 286

—*Keeping of redemption in Right to subroga*

—*Invalidity of — Substituted mortgage — Right of*

—*Mortgage suit — Claim by mortgagor defendant to abatement of mortgage-money — Set-off or counter-claim*

MORTGAGE—Mortgage suit.

in respect of — *Permissibility — Proper remedy.* See C. P. CODE, O. 8, R. 6.

19 Fat L.T. 585 =
1938 P.W.N. 603.
—*Mortgage suit — Costs — Appeal by mortgagor from preliminary decree — Costs awarded by appellate Court to mortgagor — Personal liability of mortgagor.*

Where an appeal filed by the mortgagor from the preliminary decree for sale passed against him was dismissed by the appellate Court which awarded costs to

where the personal remedy for the balance of the money ordinarily due on the mortgage is barred and the appellate decree for costs is, from its very form and terms, a

is not liable on the but it depends entirely Where the order was suit be decreed with costs on context against defendants 3 to 9 (subsequent purchasers) and *ex parte* against others.

Held, that the order was capable of construction in one way only and that it was only an ordinary mortgage against defendant. (*Har Lal, J.*)

11 B.P. 170 =
1938 P.W.N. 710.

—*Mortgage suit — Costs — Personal decree for — If can be passed.*

In a mortgage suit, a personal decree for costs cannot be passed. (*Henderson, J.*) **SORASHIBALA DAS v. AHAD BAZ.** 42 C.W.N. 888 = 68 C.L.J. 409.

—*Mortgage suit — Costs — Personal decree for — Power of Court to pass — Construction of decree.*

Although the general rule in a mortgage suit is to add security, the Court may make an order for costs. It will really be as to what the Court actually did. The mere absence of words that the

after remand, it would be a perfectly reasonable construction of the decree to hold that as regards the

MORTGAGE—Mortgage suit.

costs of the appeal the decree is a personal decree against the
 LALIT MOH
 PADHAYA.

—Mortg.—Transaction between cultivator and rice mill owner—Accounts produced by the defendants only—Decision of lower Court—Value—Interference.

Where in respect of a mortgage transaction between a Burman cultivator and a Chinese rice mill owner, a suit is brought and the defendants plead that the debt is

MORTGAGE—Release by mortgagee.

—Priority—Agreement to mortgage—Effect of—Subsequent—If relates SS. 58 AND n L.B. 645.

—Receiver—If can be appointed in a suit for sale on simple mortgage. See C. P. CODE, O. 40, R. 1—MORTGAGE SUIT 1938 A M L J. 90.

—Redemption—Clog on—Mortgage for 10 years—Clause providing for payment of mortgage amount on expiry of term—Further clause that payment by mortgagor a particular duty of redemption.

also, that the for ten years the other deed Page 1 shall pay

HLA v. MA NGWE SINT. 175 I.C. 457=
 1938 M.W.N. 768=1938 O.L.B. 38=
 11 B.P.C. 39=4 B

—Mortgage suit—Pr.

On the passing of a preliminary decree on the basis of a mortgage the relations between the parties are governed not by the terms of the mortgage deed which has ceased to exist, but by the terms of the preliminary decree into which the mortgage becomes merged. (Mitra, J.) TAYYAB HASSAN v. SAGHIR HASAN. 1938 A L J 997=
 1938 A W B (H.O.) 728.

—Mortgage suit—Representation—Suit on mortgage by unauthorised person—Wrong legal representa-

other deed," Held, that the stipulation in the deed restricting the

(Venkatasubba Rao and Newsam, J.J.) SUPPAN CHETTIAR v. RANGAN CHETTIAR, (1938) M.W.N. 356=A L.B. 1938 Mad. 405.

—Release by mortgagee in favour of mortgagor—Subsequent sub-mortgage to another—Arrangement between mortgagor and mortgagee that deed of release to take effect on future date—Undertaking by mortgagee to redeem sub-mortgage—Subsequent assignment by mortgagee to sub-mortgagee—Rights of mortgagor as against

ing property in execution of his decree—Subsequent

undertook to redeem sub-mortgage to B by end of 1339

reupon S deed of omise be 1928, in case should be but A should share until the til delivery of amount. S

MORTGAGE—Release by mortgagee.

ther *S* might recover his property by assigning other securities to *B* or whether *S* or *M* might be able to satisfy *B* by paying the proportionate amount of the mortgage debt. (*James and Chatter*
BIHAR, LTD., *CHAPRA v. MAHOMI*
175 I.C. 78=10 R.P.

A.I.

—*Rights of mortgagee—*
sequent lease by mortgagee—

A mortgage ■ not affect mortgage after the mortgage, unless the lease be in the usual course of management. So far as dealings by mortgagees with third parties are concerned, mortgagees, in whose favour a mortgage has been created by an indenture who has deeds. A ds and a und on the

same footing. A mortgage created by title deeds does not create only an equitable to be defeated or postponed, as in England subsequent purchaser for value without notice.

MORTGAGE—Subrogation.

A.I.R. 1938 Pesh. 73.

—*Sub mortgage—Original mortgagee's right to maintain suit.*

—*Sub-mortgage—Right of sub-mortgagee to sue original mortgagee—Parties to and frame of suit. See T. P. ACT, S. 55 (6). 48 L.W. 768.*

—*Subrogation—Equitable doctrine of—Scope of rule.*

The equitable doctrine of subrogation existed in India prior to 1st April 1930. Where a person lends money to a mortgagee for the purpose of paying off a lender is subro- hose mortgage is the rights of the

to enforce whole charge against the rest.

The mortgagee is obviously bound to pay his debt, and when the interests of third parties do not intervene of

A.Y.

11 R.R. 164=A.I.R. 1938 Rang. 306 (F.B.).

—*Subrogation—Equitable right of—Prior mortgagee paying off subsequent mortgagee at the request of*

security by operation of mortgagee's right to rest. (*Bois, J.*)

—*Rights of mortgagee—Unfructuary mortgage—Unpaid balance of loan—Suit to recover—Nature of—If maintainable—Measure of compensation*

In the case of possessory mortgage has been completed and possession the mortgagee but the full amount is not paid to the mortgagee, for the balance of the amount suit for compensation and the

A.I.R. 1938 Bom. 115.

—*Subrogation—Mortgagee taking another mortgage in lieu of his prior mortgage—Intention to keep*

mortgagee, the mortgagee has got every right to redeem the mortgage and get rid of the liabilities thereunder.

while the first was simple and that no mention was made in the second mortgage deed of an intention to

MORTGAGE—Subrogation.

subsequently pays off a prior encumbrance is entitled to the benefit of the doctrine of subrogation. Where the owner of an estate pays charges on the estate which he is entitled to keep these charges in the mortgage of the

to his interest. While it is well-settled that a purchaser who has undertaken to pay two or more encumbrances cannot, after paying the first of these, get the benefit of subrogation against subsequent encumbrancers whom he has agreed to pay, there is no warrant for holding that because there has been arrangement between the mortgagor and the purchaser of the equity of redemption by which the latter is to pay off an encumbrance it must necessarily follow that the intention was that that encumbrance was not to be kept alive (*Wort and Rowland, J.J.*) ABU MOHAMMAD MIAN v DEO DUTT 17 Pat 154=1938 P W N 18=18 Pat L T 994

Subrogation—Right to—Person advancing money to pay off mortgage decrees and to prevent sale in execution—Omission to take formal deed of mortgage as attended—Effect of

A person who advances money to the mortgagor to pay off the amount due under a decree on a prior mortgage and to prevent the sale of the property in execution of the mortgage decree is entitled to invoke the doctrine of subrogation. The mere fact that the money is advanced no form.

NARASIMHA RAO NAIDU. 176 I C 976=11 E M. 209=1937 M.W.N 1262=47 L W 40=A I R 1938 Mad 161

Subrogation—Right of vendee paying off mortgage debt—Payment—If should be in addition to purchase money

Under the law of subrogation as it stood prior to the enactment of S. 92 of the Transfer Property Act in 1929 a purchaser of the mortgaged property v mortgage debt out of the purchase money claim subrogation. There is no warrant that payment should be in addition money and not out of it (*Venkatasubba v Rahman, J.J.*) SRINIVASALU NAIDU v DAMODARA SWAMI NAIDU 1938 M.W.N 708=

Substituted family property by. Partition suit by mortgaged property

MORTGAGE—Substituted security.

allotted to mort-
for mortgage—
if non mortgagor

family executed a

of the properties allotted to the branch of the mortgagor. In a suit by the mortgagee (appellant) on the mortgage he was given a decree for substituted security. The appellant proceeded to execute his decree against the properties allotted to the branch of his mortgagor. The plaintiff in the partition suit claimed payment of certain amounts out of the sale proceeds under the direction contained in the final decree in the partition suit

right to execute his lared in favour of receive a cash sum sold, (2) that the plaintiff in the partition suit was entitled to a charge on the properties sold for the amount awarded by way of owely and had such a prior charge as against the appellant, (3) that the appellant by his decree against a substituted security did not get a right against the whole of the properties allotted to his mortgagor regardless of any incident of the partition in derogation of that share, but only a right to proceed against the net share of his mortgagor after making allowance for deductions to be met under the partition decree, that is, that the substituted security to which the mortgagee was entitled should not be more than the actual share of the mortgagor (*Wadsworth, J.*) RATHNA-VELU CHETTIAR v SUBRAMANIAM CHETTIY 48 L W 215=(1938) M W N 1096=A I R 1938 Mad 767.

Substituted security—Mortgage of undivided share—Subsequent partition—Right of mortgagee to proceed against property allotted at partition

Where a mortgagor mortgages part of his property from his undivided share and after a partition he is

um before, (*Wort and Varma, J.J.*) BALAKRISHNA PRASAD v APURBO KRISHNA 175 I M 191=4 E R 547=10 E P. 593=A I R 1938 Pat 199

Substituted security—Right of charge holder to follow

K obtained a money decree against B and attached in execution a decree for costs obtained by B against a certain debt. The attached decree was executed by K sit in Court. by K, B of A X the execu- confirmation.

To this suit K was not made a party. In execution of the decree obtained on the basis of charge, X applied in Court to order directing ad, to K on

MUSSALMAN WAKF (1923), S. 10.

designated to receive the particulars referred to in the Act as to enter into an elaborate inquiry as to existence of the wakf or to determine the right mutawalliship between rival claimants. By leaving right no mutawalliship undecided, the object of the Act not frustrated because Ss 5 and 10 act as preventive against applications under S 3 being made by persons who are not actually mutawallis. (*Agarwala, J.*)

NANHE SHAH v. ABDUL HASAN.

174 I.C. 152 = 4 B.E. 391 = 10 B.P. 481 =
19 Pat L.T. 617 = A.I.R. 1938 Pat 137

— (as amended by Bombay Act XVIII of 1935),
Ss. 10 and 10 B—Jurisdiction to try offences under—
If confined to District Court.

After the Bombay Amending Act Bombay Presidency and presumably it is not now the scheme of the Act that the Act should be punished only by 1 as the only Court competent. Amending Act has now the offence under S. 10 a generally to offences co whole. The scheme of it the Act are ordinary criminal proceedings to be tried by the ordinary Criminal Courts with the provisos that sanction for prosecutions must be given by a Court in the manner prescribed and that no Criminal Court of the Second or Third Class Magistrate shall be competent to try an offence under that Act (*Dutt, J.C. and Lobo, J.*) **PIR SHAHDINO SHAH v. EMPEROR.**

176 I.C. 767 = 11 B.E. 36 = 39 Cr L.J. 805 =
A.I.R. 1938 Sind 149

MUSSALMAN WAKF VALIDATING ACTS OF 1913 AND 1930—Mortgage created before 1930—If affected by these Acts

The Mussalman Wakf Validating Act of 1913 had no retrospective effect and it was only by the later Act of 1930 that it was made to apply to wakfs created before 1913 and then only if any right, title, obligation or a mortgage affected by (J.J.) SRI

172 I.C. 882 = 1938 O.L.R. 44 = 1938 O.A. 96 =
1938 O.W.N. 67 = 10 B.O. 200 =
A.I.R. 1938 Oudh 69.

—S. 3—Interpretation—Wakf excluding principal heir—Validity.

A wakf which is against the Mahomedan Law of Inheritance and which excludes the principal heir is not invalid under S. 3 of the Mussalman Wakf Validating

descendants the expression "family, children and descendants" does not mean the family or children or of a particular class. Under Mahomed wakf can be created in favour only of the family or some of the children whether males or females
(*Addition of Abdul Rashid*)
TAJ BEGUM.

40 P.L.R.

MUTATION—Discussion

Potential of—Subsequent—Necessity

MYSORE AGRIC. REL. REG., S. 11.

decree of Civil Court in favour of another Effect—If

decree cannot on the strength of such a decree apply either for mutation or correction. The person in possession could only be put out of possession by a decree of *dakhl* given by a Revenue Court. (*Darling, S.J. and Bamford, J.M.*) **NARAIN SINGH v. M.S.T. KUNWAR.**

1938 A.L.J. (Supp.) 33 = 1938 A.W.B. 61 (B.E.)

—Evidence—Realisations of rent after date of application—Value.

recorded as such on his undertaking to surrender possession after Civil Court's decree—Mortgagee applying for mutation after decree by Civil Court—Application opposed by thekadar—Mortgagee's remedy. See **AGRA TENANCY ACT S. 237.** 1937 B.D. 391.

MYSORE REGULATIONS AND ACTS

Agriculturists' Relief Regulation.
Arbitration Regulation.
City Municipalities Act.
Civil Procedure Code Regulation.
Companies Regulation.
Co-operative Societies Regulation.
Court-fees regulation.
Criminal Procedure Code Regulation.
Excise Regulation.
Hindu Women's Rights Regulation.

Transfer of Property Regulation.
Workmen's Compensation Regulation.

EF BEGU-
pl. 1 (b)

agriculturalist place is on
and Singara-
GANGE GOWDA v. POONAM-CHAND
15 Mys L.J. 547 = 42 Mys H.C.B. 597.

preliminary decree—Necessity for.
CODE, O. 34 R. 5

43 Mys H.O.B. 483.

MORTGAGE—Subrogation.

keep alive the first mortgage, do not show that he did not intend to keep alive the earlier mortgage. (*Zia-ud-Haish and Hamilton, J.J.*) PITAMRAH DAS v. DURGA BAKSH SINGH. 178 I.C. 271—10 R.O. 214—1938 O.L.R. 91—1938 O.A. 138—1938 W.N. 155—A.I.R. 1938 Oudh 90.

—Subrogation—Purchaser of equity of redemption paying off prior encumbrance—Right of—Keeping alive—Intention—Presumption—Agreement between mortgagor and purchaser that latter should pay off encumbrance—If negative intention to keep same alive.

A person who purchases the equity of redemption and

the ordinary rule is that a man having a right to act in either of two ways shall be assumed to have acted according to his interest. While it is well settled that a purchaser who has undertaken to pay two or more encumbrances cannot, after paying the first of these, get the benefit of subrogation against subsequent encumbrancers whom he has agreed to pay, there is no warrant for holding that because there has been arrangement between the mortgagor and the purchaser of the equity of redemption by which the latter is to pay off an encumbrance it must necessarily follow that the intention was that that encumbrance was not to be kept alive (*Wort and Rowland, J.J.*) ABU MO DUTT. 17 Pat.

—Subrogation—Right to—To pay off mortgage decree and to present suit in execution—Omission to take formal deed of mortgage as intended—Effect of.

A person who advances money to the mortgagor to pay off the amount due under a decree on a prior mortgage and to prevent the sale of the property in execution of the mortgage decree is entitled to invoke the doctrine of subrogation. The mere fact that at the time when the money is advanced no formal deed of mortgage is executed or that the parties intend to secure repayment by a formal deed of mortgage will not affect the applicability of the rule of subrogation. (*Leach, C.J. and Varadachariar, J.J.*) OONAMALAI ANMAL v. NARASIMHA RAO NAIDU. 176 I.C. 976—11 R.M. 209—1937 M.W.N. 1262—47 L.W. 40—A.I.R. 1938 Mad 161.

—Subrogation—Rights of vendee paying off mortgage debt—Payment—If should be in addition to

claim subrogation that payment should be made by money and not out of the pocket of the mortgagor. (*Rahman, J.J.*) SR SWAMI NAIDU.

—Substituted family property by. Partition suit by a mortgagor.

MORTGAGE—Substituted security.

—Right to payment of amount out of share allotted to mortgagor—Decree for substituted security for mortgage—Execution—Rights of mortgagee and of non mortgagor co partner.

One of two brothers of a Hindu family executed a mortgage of two items of property to the appellant. In a partition suit by the son of the other brother who had deceased, to which the appellant was not a party, the final decree allotted to the plaintiff the mortgaged items of property and gave the plaintiff a right to a payment of a certain amount, by way of owelty to equalise the shares, and the money was made payable from the share

the plaintiff in the partition suit to receive a cash sum out of the proceeds of the properties sold, (2) that the plaintiff in the partition suit was entitled to a charge on the properties sold for the amount awarded by way of owelty and had such a prior charge as against the appellant; (3) that the appellant by his decree against a substituted security did not get a right against the whole of the properties allotted to his mortgagor regardless of any incident of the partition in derogation of that share, but only a right to proceed against the net share of his mortgagor after making allowance for deductions to be met under the partition decree, the mortgagor's actual share.

1096—A.I.R. 1938 Mad 767.

—Substituted security—Mortgage of undivided share—Subsequent partition—Right of mortgagee to proceed against property allotted at partition.

Where a mortgagor mortgages part of his property from his undivided share, and after a partition he is given other property than that which was mortgaged, the mortgagee can follow that proportion of the property allotted to the mortgagor that would bear the same ratio to the property mortgaged and unmortgaged held by him before (*Wort and Varma, J.J.*) BALAKRISHNA PRASAD v. APURBO KRISHNA. 175 I.C. 191—4 B.R. 547—10 E.P. 593—A.I.R. 1938 Pat 199.

—Substituted security—Right of charge holder to follow

of the mortgagor's share in the execution of the mortgage. (*Wort and Varma, J.J.*) BALAKRISHNA PRASAD v. APURBO KRISHNA.

MORTGAGE—Substituted security.

the pledge in the new form applied only in cases where the conversion of the security became binding on the

MOTOR VEHICLES ACT (1914), S. 5.

granted
id of the
wall ran
along the third side. The fourth side, however, was open and looked towards a public street. The land was

in execution—Rival purchasers—Priority—Right to

other as a party to his suit, priority of the date of purchase of the mortgagor's right to possession gives priority of title to possession until the rights of the parties are worked out. The earlier purchaser the earlier possession, there is no reason why because the subsequent first. (*Shankaranarayana Rao and Abdul Ghani, J.J.*) SINGALACHAR v. THINME GOWD.

16

Usfructuary mortgage—Advances and provision for repayment in instalments of years—Mortgagee put in possession annual profits towards debt—Form of mortgage.

Where the essence of transaction is security, there being an advance to the mortgagor-debtor and provision for repayment to the creditor in instalments for a term of years, and the

Usfructuary mortgage. The fact that a mortgage is immaterial. (Wari and Varma, J.J.)

GHOSH v. BAIJNATH PANDEY.

176 I.O. 892=

4 B.E. 784=11 E.P. 121=A.I.R. 1938 Pat. 388.

Usfructuary mortgagee's interest—Nature of.

The interest of a usufructuary mortgagee in the mortgage, is comprising as out of land.

FATEH SINGH v. ANAND SINGH.

two sections seems to be this. A man may drive a motor vehicle in a manner dangerous to the public,

he may not endanger any person at all because there

to be

manner

amount

there.

Code,

sely to

there

ingered.

manner

some passer-by only saves his life by a wild leap to safety, then the driver of the vehicle is driving in a manner so rash and negligent as at least to be likely to cause hurt to that person who only saved his life by his agility and an offence under S. 279, Penal Code has

Sharpe, J.J.) THE

J 642=11 B.E. 9=

A I R 1938 RANG 161.

M.
Ppl.
P

place as defined in S. 2, Motor Vehicles Act. To make it a public place under the Motor Vehicles Act, it must be a road, street, way or a place over which the public

MUHAMMAD RAFIQ v. EMPEROR.

173 I.O. 860=4 B.E. 351=10 E.P. 451=

39 Cr.L.J. 382=A.I.R. 1938 Pat. 268.

MOTOR VEHICLES ACT (1914), S. 11

—Ss. 11 and 16—*Bombay Motor Vehicles Rules, R. 21—If ultra vires—Notification under by District Magistrate—Breach of—Offence.*

Rule 21 of the Bombay Motor Vehicles Rules framed by the Local Government under S. 11 of the Motor Vehicles Act is not ultra vires of the Local Government. A notification issued by a District Magistrate under R. 21, prohibiting the driving on certain roads of the District of *inter alia* any motor vehicle, public or

—S. 11, RULES UNDER S. 30-B (MADRAS)—*ultra vires.*

Per Baguliy, J.—The power to seize a license given under rules framed by Local Government from its owner and keep it for a certain time cannot in any way help to carry into effect the provisions of the Act. It is not a temporary suspension of the license because

175 I.C. 639—39 Cr.L.J. 642—11 B.R. 9—
A.I.R. 1933 Bang 161.

—S. 11 and R. 30 (a)—*Absence of 'G' permit—Private lorry—Conveying of goods for hire on a single occasion—If an offence.*

Though R. 30 (a) may be primarily intended to apply

—S. 16—*Madras Motor Vehi*
Charge against owner of lorry of
of proof

In a prosecution of the owner of S. 16 of the Motor Vehicles Act for overloading the lorry in contravention of R. 15 A, of the Rules, the burden is on the prosecution accused knew that the lorry was overloaded in question with the load is shown to be proceeding from a place far away from the place where the owner of the lorry has his business, it cannot be held that the accused knew of the overloading (*Horsall, J.*) DEVARAJA MUDALIAR v EMPEROR

48 L.W. 319—1938 M.W.N. 867—
178 I.C.
A.I.R. 1938 Mad

—Ss. 16 and 4 (c)—*N*

173 I.C. 860—4 B.R. 351—10 R.P. 451—
39 Cr.L.J. 382—A.I.R. 1938 Pat. 268.

MUSSALMAN WAKF (1923), S. 3.

—S. 16—*Offence—Madras Motor Vehicles Rules, R. 30 (a) (1) (i)—"Let for hire"—Meaning of—Lorry engaged for journey from place in one district to place in another district—If let for hire along roads in both districts—Absence of special G permit—Offence—If committed in both districts.*

"Letting for hire" in R. 30 (a) (1) (i) of the Madras Motor Vehicles Rules framed under the Motor Vehicles Act of 1914, need not be one definite and localised act,

mits an offence under S. 16 of the Motor Vehicles Act not only in the District of Malabar but also in the district of Coimbatore if the lorry gets beyond the limits of the district of Malabar on its journey to Pollachi. The framers of the rules must reasonably be held to have intended that permits should be taken out for every

30 (a) (1) (i)—*Violation of—Prosecution for—Failure to prove absence of G permit—Effect.*

In a prosecution under S. 16 of the Motor Vehicles Act for violation of r. 30 (a)(1)(i) of the Madras Motor Vehicles Rules, it is incumbent on the prosecution to prove by evidence that the vehicle in question was not

to let in evidence of
(*Burn J.*) PUBLIC
177 I.C. 314—
861—11 B.M. 303—
822—47 L.W. 774—
(1938) 1 M.L.J. 800,
ules Rules, R. 23—
ty to conviction for

under R. 23 of the Punjab Motor Vehicles Rules read with S. 16, Motor Vehicles Act, on the ground that his lorry was carrying a load in excess of its carrying capacity (*Ram Lal, J.*) GURANDITTA v EMPEROR.

177 I.C. 975—39 Cr.L.J. 970—
40 P.Y. R. 412—A.I.R. 1938 Pat. 261

39 Bom.L.R. 1269.

—S. 3, 5 and 10—*Enquiry—Scope of—Right to mutualship between rival claimants—If to be determined.*

There is nothing in the Mussalman Wakf Act either in its preamble or in its provisions to indicate that was the intention of the Legislature that the

MUSSALMAN WAKF (1923), S. 10.

designated to receive the particulars referred to in the Act is to enter into an elaborate inquiry as to the existence of the wakf or to determine the right to mutwalliship between rival claimants. By leaving the right to mutwalliship undecided, the object of the Act is not frustrated because Ss. 5 and 10 act as preventive against applications under S. 3 being made by persons who are not actually mutwallis. (*Agarwala, J.*)

NANHE SHAH v. ABDUL HASAN.

174 I.C. 152-4 H.R. 391-10 R.P. 481-

19 Pat. L.T. 617-A.I.R. 1938 Pat. 137

(as amended by Bombay Act XVIII of 1935),
offences under—

as the only Court contemplated by Amending Act has now created the offence under S. 10 and added S. 10 B which applies generally to offences committed under the Act as a whole. The scheme of the Act is that offences under the Act are ordinary criminal proceedings to be tried by the ordinary Criminal Courts with the provisos that sanction for prosecutions must be given by a Court in the manner prescribed and that no Criminal Court of the Second or Third Class Magistrate shall be competent to try an offence under that Act (*Datta, J.C. and Lobo, J.*) **PIR SHAHDINO SHAH v. EMPEROR.**

176 I.C. 767-11 R.E. 36-39 Cr. L.J. 805-

A.I.R. 1938 Sind 149

MUSSALMAN WAKF VALIDATING ACTS OF 1913 AND 1930—Mortgage created before 1930—If affected by these Acts.

The Mussalman Wakf Validating Act of 1913 had no retrospective effect and it was only by the later Act of 1930 that it was made to apply to wakfs created before 1913 and then only if any right, title, obligation or liability already existing was not affected. A mortgage created before 1930 cannot, therefore, be affected by these Acts. (*Zia ul-Haizan and Hamilton, J.J.*) **SRI RAM v. MAHOMED ABDUL RAHIM KHAN**

172 I.C. 882-1938 O.L.E. 44-1938 O.A. 96-

1938 O.W.N. 67-10 R.E. 200-

A.I.R. 1938 Oudh 69.

—S. 3—Interpretation—Wakf excluding principal heir—Validity.

MYSORE AGR. REL. REG., S. 11.

decree of Civil Court in favour of another—Effect—If can justify order of correction.

Where a person is in possession after the decision of a mutation case in his favour, the opposite party who went to a Civil Court and obtained only a declaratory decree cannot on the strength of such a decree apply either for mutation or correction. The person in possession could only be put out of possession by a decree of *dakhil* given by a Revenue Court. (*Darling, S.M. and Bomford, J.M.*) **NAKAIN SINGH v. MST. KUNJI KUNWAR.**

1938 H.D. 245-

1938 A.L.J. (Supp.) 33-1938 A.W.B. 51 (B.R.).

—Evidence—Realisations of rent after date of application—Value.

1938 A.W.R. (B.R.) 375.

—Theka granted by mortgagor pending foreclosure proceedings—Mortgagee agreeing to thekadar being recorded as such on his undertaking to surrender possession after Civil Court's decree—Mortgagee applying for mutation after decree by Civil Court—Application opposed by thekadar—Mortgagee's remedy. See **AGRA TENANCY ACT S. 237.**

1937 B.D. 391.

MYSORE REGULATIONS AND ACTS.

Agriculturists' Relief Regulation.
Arbitration Regulation.
City Municipalities Act.
Civil Procedure Code Regulation.
Companies Regulation.
Co-operative Societies Regulation.
Court-fees regulation.
Criminal Procedure Code Regulation.
Excise Regulation.
Hindu Women's Rights Regulation.
Insolvency Regulation.
Land Acquisition Regulation.
Land Revenue Code Regulation.
Limitation Regulation.
Negotiable Instruments Regulation.
Police Regulation.
Railways Act.
Registration Regulation.
Regulation VII OF 1923.
Town Municipalities Regulation.
lation.
regulation.

RELIEF REGU-

2, Expt. 1 (b)–

was an agriculturist
on took place on

MUTATION—Decision in mutation proceedings—Possession in pursuance of—Subsequent declaratory

See **MYSORE C. P. CODE, O. 34, R. 5**
43 Mys.H.C.R. 483.

MYSORE ARBITRATION REGULATION (I OF 1917), S. 12 and Sch. I, para. 3—Scope—Discretion of Court—Enlargement of time beyond period fixed after making of award—Powers of Court—Conduct of parties—Effect.

The Court has ample power under S. 12 of the Arbitration Regulation to extend time even after an award has been made by the arbitrators, beyond the period provided for by the deed of submission or by para. 3 of Sch. I of the Regulation. Arbitration is a special method prescribed by the Legislature for the settlement of disputes in a speedy and inexpensive

MYSORE C. P. C. REG. (1911), O. 7, R. 11.

MUNICIPALITY v. VISWANATHA RAO.

18 Mys L J, 368.

MYSORE CIVIL PROCEDURE CODE REGULATION (III OF 1911), S. 48—Applicability—Application for arrest and for attachment of moveables filed within 12 years—Application after 12 years for amendment of former by permitting attachment and sale of immovable properties not mentioned before—If can be allowed—Bar of limitation—O. 21, R 17 (2)—Powers of amendment

decree holder applies for execution by arrest of debtor and attachment of his moveable

arbitrators, including the award made by them out of time. Where all the parties have by their conduct agreed

an application for addition of other properties made after 12 years after the decree a continuation of the

MYSORE CITY MUNICIPALITIES ACT (1935),

■ 41 (7)—Applicability—Contract of bailment—Essentials of Validity—Bicycle stand put up by Municipality outside market—Municipal peon at stand giving token to person parking cycle at stand and taking same back when bicycle is taken away—Relation ship of bailment—If created—Liability of Municipality for loss of parked bicycle.

In the absence of a proper contract of bailment confirming to the provisions of S. 41 (7) of the City Municipalities Act, the Municipal Council cannot be made liable as a bailor in a bailment of a bicycle.

outside a Municipal Court. It was usual for cyclists going into the market on business to leave their bicycles in that stand; and when a bicycle was so left there a peon of the Municipality handed to the

to the market and left his bicycle at the stand and was given by the peon two discs. When plaintiff after his work inside the market handed back the discs to the peon, he did not find his bicycle in the stand and was told that it had been taken away by some one else. Plaintiff sued the Municipality for return of his bicycle or the value thereof on the ground of an implied contract of bailment.

Held, (1) that was no bailment or entrustment of the bicycle by the plaintiff to the Municipal peon so as to render the Municipality liable to the plaintiff to return the bicycle to the plaintiff, (2) that the plaintiff at best was a mere licensee who kept his bicycle at the stand at his own risk and was therefore not entitled to sue the Municipality on any contractual basis. (*Sankaranarayana Rao, J.*) **BANGALORE CITY**

GOWDA v. SHIVALINGAPPAIA.

16 Mys L J 463 = 43 Mys H O R. 476.

—S. 104—Pending suit—Arbitration—Award—Order refusing to file—Appeal—Revision

No appeal lies under S. 104, C P Code, from an order refusing to file an award made on a reference to arbitration in a pending suit, and consequently an application in revision against such order is competent. (*Singaravelu Mudaliar, J.*) **KRISHNAMURTHY NAIDU v. PELLANAGANMA.**

16 Mys L J, 158.

—S. 115—Applicability—Order under S. 476-B on appeal from order by Civil Court—Revision—If to be

S. 115, C P Code and not S. 476 (1), Cr. P. Code, applies to a case where a Civil Court passes an order under S. 476 B, Cr P Code, making or refusing to make a complaint, on appeal from an order under S. 476 (1), Cr. P. Code. The mere fact that a

(1), Cr. P. Code. The words "any proceeding" in S. 439 (1), Cr P Code, must be taken to mean any proceeding of an inferior Criminal Court. S. 435 and 439, Cr P Code must be read together. (*Sankaranarayana Rao and Sreenivasa Rao, JJ.*) **RAMASWAMY IYER.**

16 Mys L J 540
16 Mys H O R. 550

—O. 7, R 11—Scope—Powers of Court—Application for payment of deficient court fees—Suit dismissed by Court before expiry of time fixed for payment of court fees—Dismissal of suit—Leave given for payment of deficient court fees—Jurisdiction—Court Fees Regulation, S. 7 (2) and 9
The only course open to a plaintiff in a suit is to pay the

MYSORE C. P. C. REG. (1911), O. 9, R. 13.

Court is to reject the plaint as directed in O. 7, R. 11, C. P. Code, and not to pass a decree against the plaintiff for the amount of the deficit court fee, Ss. 7 (1) and 9 of the Court-Fees Regulation also prescribe the same procedure, namely, to stay the suit until the additional fee is paid and in case of non payment within the time fixed to dismiss the suit. The under both the C. P. Code and tion is to refuse to give the pl. and not to pass a decree for t failure by the party directed to a suit for partition of immovable property by metes and bounds and for delivery of the plaintiff's share, the plaintiff was ordered to pay an additional court-fee within a period of two months. In the meanwhile the parties represented to the Court that the suit had been settled out of Court and might be dismissed without costs. The Court in dismissing the suit directed that the plaintiff should pay the balance of court fee as ordered already and that it should be first charge on his share of the properties.

Held, that the order of the Court was without jurisdiction and must be set aside, as neither the C. P. Code,

O. 9, R. 13—Burden of proof—Allegation of non-

Evidence Act, S. 114 (c).

It is not incumbent on a defendant who applies to have a decree passed *ex parte* against him set aside on the ground that the summons was not served on him and that the return of service on the same was false, to

and fair methods of procedure. There is no warrant for holding that a presumption should be raised under S. 114, (iii), (c) of the Evidence Act, in the effect that the process server had regularly and truly effected the service, from the mere fact of the return submitted by him. S. 114 of the Evidence Act does not lay down rules of presumption to be raised under all circumstances. It merely gives illustrations of presumptions of fact to be drawn according to the circumstances of each case, and it is left to the Court to presume when it thinks reasonable to do so. (*Reilly, C.J.*, *Shankaranarayana Rao and Singaravelu Mudaltar, J.J.*) **SOMANNA v. HEERAJI.** 16 Mys L J. 485—43 Mys H C R. 503.

O. 18, R. 5 and 11—Applicability—Enquiry as to status under Agriculturists' Relief Regulation—Nature and scope of—If falls under R. 5.

O. 18, R. 5, C. P. Code, does not apply to an inquiry on the question as to the status of an agriculturist under S. 4 of the Agriculturists' Relief Regulation. S. 4 of that Regulation provides for a primary and independent enquiry as to the status of a party and expressly takes away the right of appeal against the adjudication as to the status, and hence the enquiry for the adjudication is independent of the trial on the suit, and therefore falls within the sec. O. 18, C. P. Code, and not under R. 5. an appeal lies against the decree in the suit cannot make R. 5, applicable. (*Shankaranarayana Rao, Off.C.J.*

MYSORE C. P. C. REG. (1911), O. 21 R. 84.

and Singaravelu Mudaltar, J.) **GANGE GOWDA v. POONANCHAND.** 15 Mys L J. 547—42 Mys H C R. 597.

—O. 21, R. 17 (2)—Powers of executing Court to amend—Extent of—Application after 12 years of decree to amend pending application made in time—Amend-

to produce same in Court—Execution against surety—Arrest and imprisonment—Subsequent execution against judgment debtor—Value of movables attached before—If to be deducted.

Certain movable properties belonging to the judgment-debtor under a decree were attached and seized and taken away from his possession, and then entrusted to a surety who executed a *muchalika* undertaking to produce the movables before Court whenever called upon to do so. The surety failed to produce them, and in execution of the decree he was arrested and sent to jail. The decree holder then proceeded to execute his

the decree holder was entitled to execute against him

properties entrusted to the surety.

Held, that it was unjust that the judgment-debtor should be called upon to pay the entire decretal debt, he having been deprived of the properties attached and that deduction should be given in the decree to the

goods attached, the proceed against the account to him for

(*Shankaranarayana LAKSHMINAH v.* 16 Mys L J. 284—43 Mys H C R. 339.

RANGIAH SETTY.

—O. 21, Rr. 71 and 85—Scope—Non-compliance.—Effect—Purchase by decree holder with leave—Failure to deposit balance after setting off decree amount due to mistake in sale papers—Sale confirmed by Court without discovering mistake—If void—Application by judgment-debtor for setting aside sale subsequently—If barred—Limitation Regulation, Arts 166 and 181—C. P. Code Regulation, S. 47.

At a sale in execution of a decree, the decree holder purchased the property for a sum of Rs. 561, after having previously obtained leave to bid and to set-off. In the sale proclamation and warrant that amount was by mistake mentioned as the decree amount, while in fact it should have been only Rs. 557—12—0. The mistake was not, however, discovered, and the sale was duly confirmed though the decree holder did not deposit in Court the difference between Rs. 561, which was the sale price and Rs. 557—12—0 which was the correct amount due under the decree. The judgment debtor did not apply to have the sale set aside under O. 21, R. 90, within 30 days of the sale, but after the sale had been confirmed and the decree holder had used to have the sale ground of material was converted into

Held, (1) that as the provisions of O. 21, R. 85 had not been complied with—the balance not having been

MYSOORE C. P. C. REG. (1911), O. 9, B. 13.

Court is to reject the plaintiff as decreed in O. 7, R. 11, C. P. Code, and not to pass a decree against the plaintiff for the amount of the default court fee. Ss. 7 (11) and 9 of the Court-Fees Regulation also prescribe the same procedure, namely, to stay the suit until the additional fee is paid and in case of non payment within the time fixed by the Court.

MYSOBE C. P. &
and Singarelli
POONAMCHAND.

—M. 21, B. 17 (2).—Powers of executing Court to amend—Extent of—Application after 12 years of decree to amend pending application made in time—Amend-
or leave to attach fresh properties—
See Mysore CIVIL PROCEDURE

E. 43—Mortgages of judgment debtors attached and entrusted to surety bond.—Failure of surety to produce same in Court—Execution against surety—Arrest and imprisonment—Subsequent execution against judgment debtor.—Value of movables attached before it to be deducted.

top is to refuse and not to pass a failure by the party directed to pay such court fee. In a suit for partition of immovable property by metes and bounds and for delivery of the plaintiff's share, the plaintiff was ordered to pay an additional court fee within a period of two months. In the meanwhile the parties represented to the Court that the suit had been settled out of Court and in costs. The Court dismissed the plaintiff's application and ordered already and that it share of the properties.

—O 9, E. 13—Burden of proof—Allegation of non-

the decree holder was entitled to execute against him

proper and sound evidence

extent of the proper value of the goods attached, the decree holder being at liberty to proceed against the

the service of our ordinary procedure and fair methods holding that S. 114, (III), (2) of the Evidence Act, to the effect that the process server had regularly and truly effected the service, from the mere fact of the return submitted by him. S. 114 of the Evidence Act does not lay down rules of presumption to be raised under all circumstances. It merely gives illustrations of presumptions of fact to be drawn according to the circumstances of each case, and it is left to the Court to apply them as the case may require.

—O. 21, Pt. 21 and 25—Scope—Non-compliance.
—Effect—Purchase by decree holder with intent to deposit balance after selling off decree amount due to mistake in sale papers—Sale confirmed by Court with-
out discovering mistake—If void—Application by judge
and debtor for setting aside sale subsequently—If
reversed—Liquidation Regulation, Arts 165 and 181—C.

—O. 18, Rr. 6 and 13—Applicability—Enquiry as to status under Agriculturalist Relief Regulation—Nature and scope of—If falls under R. 5.

mistake mentioned as the decree amount, while in fact it should have been only Rs 557-12-0. The mistake was not, however, discovered, and the sale was duly

an appeal lies against the decree in the suit cannot make R. 5, applicable. (*Sankararamayana Rao, Off.C.J.*)

which was the correct amount due to the debtor as of O. 21, R. he said that he had been confirmed a suit was instituted to have the sale declared illegal and void on the ground of material irregularity and fraud, but the suit was converted into an application under S. 47, C. P. Code.

H.H., (1) that as the provisions of O. 21, R. 18 had not been complied with—the balance not having been

MYSORE C. P. C. REG. (1911), O. 9, R. 13.

procedure, namely, to stay the suit until the additional

and not to pass a decree for the amount in case of failure by the party directed to pay such court-fee. In a suit for partition of immovable property by metes and bounds and for delivery of the plaintiff's share, the plaintiff was ordered to pay an additional court-fee within a period of two months. In the meanwhile the parties represented to the Court that the suit had been settled out of Court and might be dismissed without costs. The Court in dismissing the suit directed that the plaintiff should pay the balance of court fee as ordered already and that it should be first charge on his

O. 9, R. 13—Burden of proof—Allegation of non-

Evidence Act, S. 114 (e).

It is not incumbent on a defendant who applies to have a decree passed *ex parte* against him set aside on the ground that the summons was not served on him and that the return of service on the same was false, to

holding that a presumption should be raised under S. 114, (III.) (e) of the Evidence Act, to the effect that the process server had regularly and truly effected the service, from the mere fact of the return submitted by him. S. 114 of the Evidence Act does not lay down rules of presumption to be raised under all circumstances. It merely gives illustrations to be drawn according to the and it is left to the Court reasonable to do so. (*Rallu, Rao and Singaravelu Mudaliar, J.J.*) SOMANNA v. HEERAJI. 18 Mys LJ 485= 43 Mys HC

O. 18, Br. 5 and 13—Applicability—
as to status under Agriculturists' Relief Regu-
Nature and scope of—If falls under R. 5

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O. 10, C. P. Code, and the appeal lies against the decree in the suit cannot make R. 5, applicable. (*Shankaranarayana Rao, Off.C.J.*)

MYSORE C. P. C. REG. (1911), O. 21 R. 84.

Mudaliar, J.) GANGE GOWDA v.
15 Mys LJ 547=
42 Mys H.C.R. 597.

7(2)—Powers of executing Court to
amend—Extent of—Application after 12 years of decree
pending application made in time—Amend-
ing for leave to attach fresh properties—
ability. See MYSORE CIVIL PROCEDURE
48. 43 Mys H.C.R. 476.

O. 21, R. 43—Movable of judgment debtor
attached and entrusted to surety bond—Failure of surety
to produce same in Court—Execution against surety—
Arrest and imprisonment—Subsequent execution against
judgment debtor—Value of movables attached before—
If to be deducted.

Certain movable properties belonging to the judg-
ment-debtor under a decree were attached and seized
and taken away from his possession, and then entrusted
to a surety who executed a muchalika undertaking to
produce the movables before Court whenever called

the decree holder was entitled to execute against him

properties entrusted to the surety.

Held, that it was unjust that the judgment-debtor
should be called upon to pay the entire decretal debt, he
having been deprived of the properties attached and
that deduction should be given in the decree to the
goods attached, the
proceed against the
to account to him for
(*Shankaranarayana
LAKSHMI v.
18 Mys LJ 284=
43 Mys. H.C.R. 339.*)

O. 21, Br. 84 and 85—Scope—Non-compliance.
—Effect—Purchase by decree-holder with leave—Failure
to deposit balance after setting off decree amount due to
mistake in sale papers—Sale confirmed by Court with-
out discovering mistake—If void—Application by judg-
sale subsequently—If
Arts 165 and 181—C.

decree, the decree holder
purchased the property for a sum of Rs 561, after
having previously obtained leave to bid and to set-off. In

O. 21, R.
he sale had
ve the sale
f material
erted into

Held, (1) that as the provisions of O. 21, R. 85 had
not been complied with—the balance not having been

MYSORE C. P. C. REG. (1911), O. 21, R. 90.

paid—the sale had to be cancelled and could not be confirmed, (2) even if it were confirmed under a mistake, it was null and void as such confirmation was without jurisdiction, (3) that Art. 166 of the Limitation Regulation did not apply to the case, as the non payment of the balance—as distinguished from a delayed payment—was not merely a matter of application being under governed by Art. 181 of the (4) that in any view, the been without jurisdiction and therefore void, there was no period of limitation for such a case and the Court could at any time *suo motu* take action on its own order of confirmation whenever brought to its notice. (*Abdul Gham Mudaliar, J.J.*)

O. 21, R.

proclamation—
and not objecting—Right to plead irregularity as ground for setting aside sale.

A judgment debtor who is present at the sale proclamation and who is present thereon and takes a copy of it, defect in it is rectified. If he do

O. 21, R. 90—Material irregularity—Omission in sale proclamation to state assessment or land revenue of properties—Sale, when liable to be set aside—Sub-

of the proceeds is a material defect in the sale

liable to be set aside. The applicant has to show that the omission was the result of fraud or loss, such as a low bid at the sale. (*Singaravelu Mudaliar, J.J.*)

FREUDENBERG & CO., MADRAS.

18 Mys L. J. 545 = 43

O. 21, R. 90—New plea not raised in application—If can be taken and considered—Powers of Court to set aside sale on new ground.

Where an application is made to a Court to set aside an execution sale on certain stated grounds

was not duly served—Burden of proof.

Proceedings held and accepted by the Court are regular and true, and the burden of proof is on the applicant.

v. FREUDENBERG & CO., MADRAS.

18 Mys L. J. 545 = 43 Mys H.C.R. 286.

O. 21, R. 103—Suit to set aside adverse order on application under O. 21, R. 97—Costs of prior unsuccessful application—Right to

MYSORE C. P. C. REG. (1911), O. 32, R. 7

The costs incurred by an unsuccessful applicant under O. 21, R. 97, C. P. Code, can be recovered by him in the suit which he subsequently institutes under O. 21, R. 103, to set aside the adverse order on his application and for possession, (*Abdul Gham and Singaravelu Mudaliar, J.J.*)

NAGAPPA v. RAMAPPA

I.C.R. 693.

on compromise

Compromise

If can be

recorded and enforced against adults only.

A compromise to which some of the parties to the suit are parties

on

Court

Where

matter. Where a compromise entered into by adults and

at the adults a compromise which is not

O. 30—Applicability—Hindu joint family firm—Promissory note in favour of—Right of suit on—Suit by manager—Competency.

O. 30, C. P. Code, does not apply to the case of a Hindu joint family firm or business. In the case of a contract entered into with the joint family business, the

cannot sue alone on behalf of the family. The manager of a joint family firm is therefore competent to sue on a

liability and scope—Reference

suit—Some parties minors—

and—Award—Validity of—If

use of adult party or by Court

some of the parties to which are minors, is referred to arbitration without the leave of the Court being obtained under O. 32, R. 7, C. P. Code, is only the minors concerned and not any adult party

reference to arbitration, the Court has no jurisdiction *suo motu* or at the instance of the adult parties to the suit to set aside the order of reference or the award. (*Singaravelu Mudaliar, J.*) KRISHNAMURTHY NAIDU v. PEDDANAGANNA. 16 Mys L.J. 158.

MYSORE C. P. C. REG. (1911), O. 9, R. 13.

Court is to reject the plaint as directed in O. 7, R. 11, C. P. Code, and not to pass a decree against the plaintiff for the amount of the deficit court fee. Ss. 7 (11) and 9 of the Court-Fees Regulation also prescribe the same procedure, namely, to stay the suit until the additional fee is paid and in case of non payment within the time fixed to dismiss the suit. The only course prescribed under both the C. P. Code and the Court Fees Regulation is to refuse to give the plaintiff the relief sought and not to pass a decree for the amount in case of failure by the party directed to pay such court fee. In a suit for partition of immovable property by metes and bounds and for delivery of the plaintiff's share, the plaintiff was ordered to pay an additional court-fee within a period of two months. In the meanwhile the parties represented to the Court that the suit had been settled out of Court and might be dismissed without costs. The Court in dismissing the suit directed that the plaintiff should pay the balance of court fee as ordered already and that it should be first charge on his share of the properties.

Held, that the order of the Court was without jurisdiction and must be set aside, as neither the C. P. Code, nor the Court Fees Regulation gave the Court the power of the kind assumed by the lower Court. (*Shankaranarayana Rao, J.*) **BASAVE GOWDA v. GOVERNMENT OF MYSORE.** 15 Mys L J 527.

—O. 9, R. 13—Burden of proof—Allegation of non-**Evidence Act, S. 114 (c).**

It is not incumbent on a defendant who applies to have a decree passed *ex parte* against him set aside on the ground that the summons was not served on him and that the return of service on the same was false, to

holding that a presumption should be raised under S. 114, (iii), (c) of the Evidence Act, to the effect that the process server had regularly and truly effected the service, from the mere fact of the return submitted by him. S. 114 of the Evidence Act does not lay down rules of presumption to be raised under all circumstances. It merely gives illustrations of presumptions of fact to be drawn according to the circumstances of each case, and it is left to the Court to presume when it thinks reasonable to do so. (*Rilly, C.J., Shankaranarayana Rao and Singaravelu Mudaliar, J.J.*) **SOMANNA v. HEERAJI.** 16 Mys L J 485—43 Mys H O R 503.

—O. 18, Rr. 5 and 13—Applicability—Enquiry as to status under Agriculturists' Relief Regulation—Nature and scope of—If falls under R. 5.

O. 18, R. 5, C.P. Code, does not apply to an inquiry on the question as to the status of an agriculturist under S. 4 of the Agriculturists' Relief Regulation. S. 4 of that Regulation provides for a primary and independent enquiry as to the status of a party and expressly takes away the right of appeal against the adjudication as to the status, and hence the enquiry for the purpose of that adjudication is independent of the trial on the merits of the suit, and therefore falls within the scope of R. 13 of O. 18, C. P. Code, and not under R. 5. The fact that an appeal lies against the decree in the suit cannot make R. 5, applicable. (*Shankaranarayana Rao, Off.C.J.*)

MYSORE C. P. C. REG. (1911), O. 21 R. 84.

and Singaravelu Mudaliar, J.) **GANGE GOWDA v. POONAMCHAND.** 15 Mys L J 547—42 Mys H O R 597.

—O. 21, R. 17 (2)—Powers of executing Court in amend—Extent of—Application after 12 years of decree to amend pending application made in time—Amendment praying for leave to attach fresh properties—Maintainability. See **MYSORE CIVIL PROCEDURE CODE, S. 48.** 43 Mys H O R 476.

—O. 21, R. 43—Movables of judgment debtor attached and entrusted to surety bond—Failure of surety to produce same in Court—Execution against surety—Arrest and imprisonment—Subsequent execution against judgment debtor—Value of movables attached before—If to be deducted.

Certain movable properties belonging to the judgment-debtor under a decree were attached and seized and taken away from his possession, and then entrusted to a surety who executed a muchalika undertaking to produce the movables before Court whenever called upon to do so. The surety failed to produce them, and in execution of the decree he was arrested and sent to jail. The decree-holder then proceeded to execute his decree against the judgment debtor, but the latter contended that the value of the movables attached and taken away from his possession should be deducted from the amount payable by him under the decree and that the decree-holder was entitled to execute against him

properties entrusted to the surety.

Held, that it was unjust that the judgment-debtor should be called upon to pay the entire decretal debt, he having been deprived of the properties attached and that deduction should be given in the decrees to the goods attached, the proceeds against the account to him for (*Shankaranarayana Lakshminiah v.*) 18 Mys L J 284—43 Mys H O R 339.

—O. 21, Rr. 84 and 85—Scope—Non-compliance—Effect—Purchase by decree holder with leave—Failure to deposit balance after setting off decree amount due to mistake in sale papers—Sale confirmed by Court without discovering mistake—If void—Application by judgment-debtor for setting aside sale subsequently—If barred—Limitation Regulation, Arts 165 and 181—C. P. Code Regulation, S. 47.

At a sale in execution of a decree, the decree holder purchased the property for a sum of Rs. 561, after having previously obtained leave to bid and to set-off. In the sale proclamation and warrant that amount was by mistake mentioned as the decree amount, while in fact it should have been only Rs. 557—12—0. The mistake was not, however, discovered, and the sale was duly confirmed though the decree holder did not deposit in Court the difference between Rs. 561, which was the sale price and Rs. 557—12—0 which was the correct amount due under the decree. The judgment debtor did not apply to have the sale set aside under O. 21, R. 90, within 30 days of the sale, but after the sale had been confirmed a suit was instituted to have the sale declared illegal and void on the ground of material irregularity and fraud; but the suit was converted into an application under S. 47, C. P. Code.

Held, (1) that as the provisions of O. 21, R. 85 had not been complied with—the balance not having been

MYSOEE O. P. C. REG. (1911), O. 32, E 7.

The costs incurred by an unsuccessful applicant under O. 21, R. 97, C. P. Code, can be recovered by him in the suit which he subsequently institutes under O. 21, R. 103, to set aside the adverse order on his application and for possession, (*Abdul Ghani and Singaravelu Mudaliar, Jf.*) NAGAPPA v. RAMAPPA.

such a compromise is prejudicial to the interests of the

matter. Where a compromise entered into by adults and

enforce against the adults a compromise which is not binding on the minors when the adults and minors have together sued for a partition. (*Abdul Ghani and Singaravelu Mudaliar, Jf*) MANICKCHAND **=** KANYALAL.
16 Mys L J. 92=43 Mys H.C.B. 1.

—O. 30—Applicability—Hindujoint family firm
—Promissory note in favour of—Right of interest on—

1

in favour of the firm,
Offs C.J. and Singaravelu
JWDA v. POONANCHAND.
547=42 Mys.H.C.B. 597.

ability and scope—Reference
 suit—Some parties minors—
 Award—Validity of—If
 of adult party or by Court

some of the parties to which
are minors, is referred to arbitration without the leave of

Figure 1. The effect of the number of trials on the number of correct responses. The number of correct responses was plotted against the number of trials for each condition. The number of correct responses increased with the number of trials for all conditions. The number of correct responses was highest for the condition with the highest number of trials (10 trials) and lowest for the condition with the lowest number of trials (2 trials).

(Sengamudali Mudaliar, J.) KRISHNAMURTHY
NAIDU v. PEDDANAGANMA. 16 Mys.L.J. 158

MYSORE C. P. C. REG. (1911), O. 32, R. 7.

—O. 32, R. 7—Leave to compromise—Application for—When to be made—If to be before effecting of compromise.

It is not necessary that leave to compromise under O.

C. P. Code, has to be made by the minor plaintiff or the defendant as the case may be, and is competent to apply for leave to compromise.

(*Advocate*) MANICKCHAND v. KANYALAL.

11 Mys L J. 82 = 43 Mys H.C.B. 1.

Q 74 P 1 Code. Now under of party inter-

MYSORE C. P. C. REG. (1911), O. 34, R. 5.

—O. 34, R. 4—Applicability—Duty of appellate Court—Preliminary decree for sale fixing amount and date of payment—Appeal by mortgagee claiming additional amount allowed—Absence of provision as to extension of time for payment.

But neither the judgment nor the decree prepared explicitly provided for any extension of the time for payment. Payment not having

Court allowed that the trial judge was not barred under Art. 181, Limitation Regulation, (Ratly, C. J. and Abdul Ghani, J.) SYED OOSMAN & CO. v. GURUBASAPPA.

15 Mys L J. 517 = 11 Mys H.C.B. 118.

his puisne mortgage is barred by limitation. But redemption of the prior mortgage will not give the puisne mortgagee a right to possession unless the prior mortgage is usufructuary. (*Shankaranarayana Rao and Abdul Ghani, J.J.*) SINGAIACHAR v. THIMME GOWDA 16 Mys L J. 499.

The ordinary rule that to a mortgage suit a person claiming adverse or paramount title is not a necessary or proper party, is not absolute or inflexible. In certain cases it may not only be proper but even desirable to implead such a person as a party. O. 34, R. 1, C. P. Code, the object of which is to define the scope of a mortgage suit, pure and simple, merely lays down who are the necessary parties to such a suit; it does not expressly prohibit the addition of a party claiming an adverse title. The rule, further, is a rule of discretion, and the matter is one of discretion, long as no question of jurisdiction is involved. Code, as amended in 1911, makes no provision vesting abundant discretion in the court in the frame of suits and the joinder of parties. (*Shankaranarayana Rao, Offg. C. J. and Singaraju Mudaliar, J.*) DODDA PUTTE GOWDA v. LINGE GOWDA. 11 Mys L J. 54 = 42 Mys H.C.B. 739.

O. 34, R. 5—Applicability—Instalment decrees—Agriculturists' Relief Act—Final decree for sale.

provisions contained in O. 34, C. P. Code, relating to the passing of preliminary and final decrees, do not govern decrees passed under the Agriculturists' Relief Act. Consequently no final decree for sale is necessary or could be made when an instalment decree is passed under S. 11 of the Agriculturists' Relief Act. (*Shankaranarayana Rao and Nagiwara Iyer, J.J.*) In the matter of A REFERENCE BY THE PRINCIPAL SUB-JUDGE, BANGALORE. 16 Mys L J 282.

ists' Relief Act. When an instalment decree is passed under S. 11 of the Agriculturists' Relief Act, no final decree for sale is necessary as in an ordinary mortgage suit. (*Shankaranarayana Rao and Nagiwara Iyer, J.J.*)

MYS. COMPANIES REGN. (1923), S. 220.

—(as amended by Regulation XVI of 1923), S. 220—*Resolution for voluntary winding up—Subsequent order for compulsory winding up by Court—Date of winding up—Date of resolution or date of petition for winding up.*

S. 220 of the Companies Regulation does not empower the Court, in making an order for compulsory winding up, to throw the commencement of the winding

OF MYSORE, LTD.

18 Mys L J. 333 =
43 Mys H O R. 237.

—S. 235—*Applicability—Official liquidator—If can be proceeded under.*

—S. 235—*Limitation—Application against liquidator for negligence—Limitation for.* See
LIMITATION REGULATION, ART. 35.

43 Mys H O R. 237.

A decree passed by the Assistant Registrar of Co operative Societies is final and cannot be called in question in a Civil Court by reason of S. 43-A (6) (b) of the Co operative Societies Regulation. A suit in the Civil Court for a declaration that the suit in which the decree was passed was not maintainable and was barred by time, and therefore the decree is not valid, is not maintainable. (*Abdul Gham and Nagervara Iyer, Jf*)
SAMPATHKUMARACHAR v. AGRICULTURAL AND TRADING CO OPERATIVE S

18 Mys L J

—(as amended in 19
and effect—*Mortgage in favour of Co operative Society—Suit on—Subsequent purchaser not impleaded—Piercer—Sale under S. 60—Bidding character of as*

to add as parties to the suit persons having interest in the equity of redemption, as in the case of a suit under the Civil Procedure Code. It cannot be said that a sale

Such interest as he has cannot entitle him to have any claim whatsoever against the purchaser at the sale in

out of Court before expiry of time fixed—Dismissal of suit as prayed by parties—Order directing plaintiff to pay Court fee as ordered—Jurisdiction. See MYSORE

MYS. CR. P. CODE REG. (1904), S. 236.

C. P. CODE REGULATION, O. 7, R. 11.

15 Mys L J. 527.

—Ss. 118 and 125—*Order by subordinate Magistrate to keep the peace—Appeal to District Magistrate Competency—Jurisdiction of latter to cancel bond taken under order—“Sufficient reason”—Insufficiency of materials on record to justify order.*

No appeal lies to a District Magistrate from an order

to keep the peace made by a Subordinate Magistrate, on the ground that the materials on record are insufficient to justify such an order, which is a “sufficient reason” within the meaning of S. 125. (*Shankaranarayana Rao*

1, 1st rr.

S.H.C.R. 489

CODE BE.

[OF 1904 as amended in 1927),
tion under—*Scope of—Report—Form*

The record of the statements made by persons before

C.J. and Nagervara Iyer, J.) CHENNABASAVIAH v.
GOVERNMENT OF MYSORE.

18 Mys L J. 293 =

43 Mys H O R. 220.

—S. 199—*“Complaint made by the husband”—Meaning of—Absence of formal complaint, either oral or written—Husband examined as witness for prosecution—Trial and conviction—Legality—Deposition of husband—If sufficient “complaint”.*

No person can be convicted on a charge under S. 498,

unless at least some evidence is put forward by a complaint by the husband which is necessary under S. 199. When there has been no complaint, i.e., an allegation made

Singaravelu Mudalsar, Jf.) MALLIAH, 1st rr.
10 Mys L J. 88 = 18 Mys H O R. 98.

—S. 225—*Scope—Non compliance with S. 222—*

nature of the offence with which he is charged, he cannot clearly be prejudiced by the omission of certain
mu, J.) RAMA-

10 Mys L J. 205.

ability and scope—

for intentionally

304-A, I. P. Code.

for causing death by rash and negligent act Legality.
The first accused was charged with the offence of murder under S. 302, I. P. Code, for having intentionally

MYS. CR. P. CODE REG. (1904), S. 342.

death of one B and his brother were charged with abetment of murder under S. 114, I. P. Code. The Sessions Judge who tried them acquitted the 1st accused of murder and also acquitted his brothers, but he convicted the 1st accused under death by a rash and ne-

Held (1) the S. 236, the framing of an alter P. Code, in the case, as there was no doubt at all in the case on the part of the Magistrate when he framed the charge as to which offence was made out and S. 237, Cr. P. Code, did not therefore justify the conviction; (2)

a full and fair opportunity of defending himself against the charge under S. 304 A, of which he had been convicted, and the conviction was therefore bad in law. (*Rally, C. J. and Singaravelu Mudaliar, J.*) **ERE GOWDA v. GOVERNMENT OF MYSORE.**

18 Mys L J. 466 = 43 Mys H O B. 493.

—S. 342—Applicability and scope—Additional evidence taken in appeal—Failure to question accused on additional evidence—If illegality—Revision—Interference

S. 342 of the Cr. P. Code applies to an original trial and not to additional appeal under S. 428, Cr. P. Code. might be cases where the accused can be questioned by the appellate Court in regard to the additional evidence taken, the appellate Court's omission to do so is not an omission of anything that is required by law and is therefore not an illegality. If such non examination results in any prejudice, however, the High Court may interfere in revision. (*Abdul Ghani, J.*) **SHAN KARAPPA v. GOVERNMENT OF MYSORE**

16 Mys L J. 210.

—S. 342—Scope—Duty of Judge to question accused—Failure to question—Effect on trial.

An accused must, under S. 342, Cr. P. Code, be ques-

MYS. CR. P. CODE REG. (1904), S. 559.

better and more appropriate for him to approach a Civil Court for attachment and sale of such a debt, but he would all the same be acting within his power if he attaches the debt by actually seizing the hypothecation on the action al or as mortgage

debt under a hypothecation bond can be assigned over in writing. It does not require a registered deed. (*Abdul Ghani and Nagaswara Iyer, J.J.*) **KALIAPPA CHETTY v. VENKATARAMANA SETTY**

153.

in

42 on

Order by Civil Court under S. 476-B—Revision—Jurisdiction—Nature of—Civil or criminal. See Mys C. P. CODE REGULATION, S. 115.

43 Mys H O B. 230.

—S. 498—Sessions Judge—Powers of, to grant bail after refusal by trial Court.

S. 498, Cr. P. Code, is very wide in its terms, a ion to en- accused pending RANGA-

11 Mys L J. 213.

—S. 520—Discretion—Interference—Grounds—Omission to give reasons in extenso—If justifies interference.

A Court of appeal or revision should not, under S. 520, Cr. P. Code, ordinarily interfere with an order under S. 517, unless it considers that the order of the lower Court regarding the disposal of the property is grossly erroneous or where the interests of justice demand that such an order should not be allowed to stand. The fact that the trial Court has not given its reasons for the order in extenso, is not by itself a ground for interfering with its discretion. (*Shankaranarayana Rao, J.*) **GOVERNMENT OF MYSORE v. SESHAPPA.**

16 Mys L J. 73.

—S. 520—Jurisdiction under—Conditions for exercise of—Absence of appeal or revision, etc., from main decision—If bar to modification of order of disposal of property

tion an ignorant accused in great detail and it is always

or that the result of the case is in any way affected by the Judge's failure to ask the necessary questions

by Civil Court and sale under C. P. Code—If necessary—Assignment of debt—If to be registered

A debt due under a hypothecation bond is movable property, and a warrant can be issued under S. 386 (1) (a), Cr. P. Code, for the levy of a fine by attachment and sale of any movable property. Where a warrant is addressed to the Deputy Commissioner, it would be

518 or 519. The fact that there are no proceedings pending by way of appeal, revision or reference, etc.,

it deprive the latter of r annul the order of trial Court (*Shan- NMENT OF MYSORE*

16 Mys L J. 73.

—S. 559—Successor of abolished Court—Power of District Magistrate to constitute himself or to declare another as successor

The District Magistrate is entitled under S. 559, Cr. P. Code, to constitute himself the successor-in-office of a Court that is abolished. The power to declare a successor-in-office is left to the District Magistrate. If

MYS EXCISE REG. (1901), S. 64.

wants to treat some other Court as successor-in-office, it would be necessary for him to determine such successor by an order in writing. But when that is not his intention and he wants to treat himself as the successor-in-office, he can well do so under S. 559. (*Abdul Ghani and Nagaswara Iyer, JJ.*) **KALIAPPA CHETTIY v. VENKATARAMANA SETTY.**

MYSORE EXCISE REGULAT.

S. 64—Vicarious Liability—Of licensee—Liability of licensee.

For any constructive liability of a holder of a license or permit in respect of offences committed by his servant, it must be proved that the servant who committed the offence was not only in the employ of the

MYS. LAND ACQN. REGN. (1894), S. 54.

S. 9 (1)—Applicability—Husband of adopting widow dying before Act—Presumption of authority—If arises.

S. 9 (1) of the Hindu Women's Rights Act cannot be read as referring only to adoptions to men who die after the Act came into force, i.e., who die not earlier than

(*Reilly, C.J. and Abdul Ghani, J.*) **SANKARAMMA v. KRISHNA RAO.**
16 Mys L.J. 376—
43 Mys H.C.B. 415.

S. 9 (1)—Authority to adopt—Presumption—

making an adoption in 1934, to extend in favour of S. 9 (1) of the Act, in writing been made up the presumption, and to give

effect to it, if it is not rebutted. (*Reilly, C.J. and Abdul Ghani, J.*) **SANKARAMMA v. KRISHNA RAO.**
16 Mys L.J. 376—43 Mys H.C.B. 415.

S. 10 (2)(g). Exception—"Alid"—Construction—Daughter in the womb at death of husband—

The existence of a daughter in the womb at the death of a widow, if there is one at the time, from inheriting the property as *stridhana*. (*Reilly, C.J. and Abdul Ghani, J.*) **CHICKANARASAPPA v. HONNURAMMA.** 16 Mys L.J. 167—
43 Mys H.C.B. 181.

16 Mys L.J. 376—43 Mys H.C.B. 415. *Widow's right to share in the property of her husband at his death.*

on—Applicability.

There is no appeal under the Land Acquisition Regulation against a decision of the Court under S. 49 (1) of the Regulation. The term "award" is used in the Land

benefit of this estate.

Under the Hindu Women's Rights Regulation so far as widows are concerned, enlargement of their estate in what had been their husbands' separate property must be held to take effect not only for the benefit of widows whose husbands died after the Regulation came into effect, but also of widows living on 1-1-1934 whose husbands had died before that date in the absence of exception in the Regulation which would prevent them from getting a full estate in that way. (*Reilly, C.J. and Abdul Ghani, J.*) **CHICKANARASAPPA v. HONNURAMMA.** 43 Mys H.C.B. 181—16 Mys L.J. 167.

Scope—Widow's right to share—Partition effected prior to Act coming into operation—Effect.

A widow of a Hindu co-parcener in family would be entitled to get a share in the family, under the Hindu Women's Rights Act provided the partition was made not earlier than the 1st of January, 1934, on which date the Act came into force. But where the partition had been effected before the Act

S. 8 (1)—Co-parcener to an estate—A female who is entitled to a share in the property of her husband at his death—Effectively when with to divide—Nagaswara Iyer, J.
WATHIAMMA.

S. 8 (1)—Only physical division—It is clearly in S. 8 (1) of the Act meaning only a division in status and actual physical separation of property into different lots. (*Reilly, C.J. and Nagaswara Iyer, J.*) **VENKATAPATHI v. SARASWATHIAMMA. 16 Mys L.J. 273—43 Mys H.C.B. 361.**

MYS. LAND REV. CODE REGN. (1888), S. 37.

Acquisition Regulation as meaning a decision in regard to the amount and distribution of the compensation for the land acquired. The decision of a Court on a reference under S. 49(1) of Regulation, regarding what land is

MYS. LIM. REGN. (1911), S. 19.

out of any contract between the parties, such rights and duties being the creatures of statute. It is no doubt open to the Government to enter into a contract with a private party, e.g., taking a bond from a party or

acting under—Injunction by Civil Court.

—S. 54—*Const*
rights of persons

defaulter—Purchaser

It cannot be held that the Land Revenue Code has the effect of wiping

missioner to forfeit not all the rights liable to forfeiture under the section but only those of the immediate defaulter, as they stand at the time, if he thinks fit. The sale is always subject to confirmation by the Deputy Commissioner and there is nothing like an immediate sale at the time of the auction. The purchaser would get only such rights as are mentioned in the order of the Deputy Commissioner confirming the sale (*Kelly, C. J. and Abdul Gham. J.*) NAGARAJA RAO v DODDA VENKATEGOWDA 16 Mys LJ 252—43 Mys HCR 325

—S. 193—*Scope—Security bond by Government Officials—Liability under—Right to decide—If one ex-*

who wants to avail himself of the benefit of S. 4 must institute his suit on the reopening day in the proper Court. If he institutes the suit on the reopening day in a wrong Court which has no jurisdiction to entertain it, and if on return of the plaint, he presents it to the proper Court, though on the same day on which it is returned, he cannot escape the bar of limitation by relying on S. 4 (*Shankaranarayana Rao, J.*) SID-DAPPA v VEERAPPA 15 Mys LJ 508

—S. 10—*Applicability—Temporary Manager of temple and its property—If 'trustee'—Suit by Musras Officer for recovery of mesne profits of endowed land from temporary manager—Limitation.*

43 M.

—S. 221 (1)—*Scope—"Respecting*
of land belonging to Government—Tank constructed by private party on darkhast land—Interference by Government—Suit for declaration of right to maintain tank and for injunction against Government—Main-

Where a public authority provisions of an enactment certain rights and imposes on it cannot be said that such rights and obligations arise

—S. 19—"Signed"—*Meaning of—Letter written by debtor but not signed at bottom—If sufficient acknowledgment*

S. 19 of the Limitation Regulation does not require

of the letter, the name of the debtor written at it

MYS. LIM. REGN. (1911), S. 20.

of the letter is a sufficient "signature" for purposes of S. 19. (*Abdul Ghani and Nagaswara Iyer, J.J.*) RAJA SEKARIAH v. KUMARASWAMI. 16 Mys L.J. 514-43 Mys H.C.B. 298.

—S. 20—Applicability—Mortgage debt—Payment by person after parting with interest in property and after personal remedy has become barred—Sufficiency to save limitation.

In the case of a debt due under a hypothecation bond, if the payment is by a person who has ceased to be personally liable for the debt and who has also parted with all his interest in the property hypothecated, then such a payment is not by a person liable to pay the debt and cannot accrue to the benefit of the creditor, so as to give a fresh period of limitation under S. 20 of the Limitation Regulation. (*Abdul Ghani and Singaraswami Mudaliar, J.J.*) THIMNEGOWDA v. THIRUKA. 16 Mys L.J. 198-43 Mys H.C.B.

—Art. 36—Applicability—Application S. 235. Companies Regulation against liquidation Limitation.

A petition under S. 235 of the Companies Regulation against a liquidator of a company for breach of duty to deal with the assets of the company according to law is not governed by Art. 36 of the Limitation. Art. 120 applies to the case. (*Nagaswara Singaraswami Mudaliar, J.J.*) ETHIRAJAN v. MYSORE, LTD. 16 Mys 43 Mys E.

—Arts. 103 and 104—Scope—Suit by Mahomedan widow for dower more than three years after the death of her husband—Maintainability—Possession by her of husband's estate and subsequent dispossession—Effect—Demand for payment made on heirs of husband—If furnishes starting point.

A suit by a Mahomedan widow for recovery of her dower from the estate of her husband in the hands of his heirs instituted more than three years after the death of her husband is barred by limitation whether the dower be prompt or deferred. If the dower be prompt, the demand would have to be made during the lifetime of the husband, and if no such demand be made, limitation commences to run on the demand made on the heirs in of no avail and does not fix limitation. If the dower be "c

MYS. POLICE REGN. (1908), S. 39.

GURUSANTHAPPA v. YELLAPPA. 16 Mys L.J. 1-42 Mys H.C.B. 645.

—Art. 149—Applicability—Muzrai Officer—Suit by for mesne profits of temple lands under Government control or management—Limitation.

Art. 149 of the Limitation which is intended for the protection of Government property applies only to a suit by or on behalf of the Government. A suit by the District Muzrai Officer, without any indication or suggestion in the plaint that it is brought by or on behalf of the Government, for recovery of mesne profits of land belonging to a temple which is a Muzrai institution is not a suit to which Art. 149 would apply. (*Keilly, C.J. and Abdul Ghani, J.*) RAJAGOPALACHAR v. DISTRICT MUZRAI OFFICER, MYSORE DISTRICT. 16 Mys L.J. 413-43 Mys H.C.B. 466.

—Art. 181—Applicability—Execution sale confirmed without jurisdiction—Application to set aside under S. 47, C. P. Code—Limitation. See C. P. CODE REGULATION, O. 21 RR. 88 AND 89.

date. See MYSORE C. P. CODE REGULATION, O. 34, R. 41. 16 Mys L.J. 517.

MYSORE NEGOTIABLE INSTRUMENTS REGULATION (VII OF 1917), Ss. 7 and 78—Promissory note—Joint payees—Suit by one only impleading other as party defendant—Rights of payees inter se—Power of Court to adjudicate upon.

There is nothing in Ss. 7 and 78 of the Negotiable Instruments Regulation which warrants the contention that a Court is not competent as between two joint promisees to decide as to whether either of them or both jointly are entitled to the money. In a suit on a promissory note by one of two joint payees impleading the

Court has power to add the other payees themselves. (*Offg. C.J. and Nagaswami, J.*) ANGAMMA. 16 Mys L.J. 13.

(V OF 1908). prohibit holding

to issue orders though restricted does not empower

Mys H.C.B. 144.

—It to be stated. Police Regulation

which requires a District Magistrate or any other magistrate empowered under that section, to state the reasons for the order in the order which he makes under that section. It may often be appropriate for a Magistrate issuing orders under the section to mention in a general way reasons which have led him to issue such orders, but it cannot be held that an order which does not contain such reasons is not lawfully made. (*Keilly, C.J. and Shankaranarayana Rao, J.*) G. R. SWAMY v.

protected.

A transferee having actual knowledge of the invalidity of the transfer is not protected by Art. 134 of the Limitation Regulation. If a person purchases property from a mortgagee with knowledge of the latter's limited interest he can claim no more than the mortgagee's interest even though the purchase purports to be an absolute sale. Art. 134 cannot apply to such a case. (*Nagaswara Iyer and Singaraswami Mudaliar, J.J.*)

MYS. POLICE REGN. (1908), S. 70.

GOVERNMENT OF MYSORE. 43 Mys H O B. 144 = 16 Mys L J. 266.

—S. 70—*Burden of proof—Disobedience of order under S. 39—Prosecution—Prejudice or legality of order—Duty of prosecution.*

In a prosecution under S. 70 of the Police Regulation

the prosecution produce the order in question and show

the order was not one lawfully made in that sense. (*Reilly, C. J. and Shankaranarayana Rao, J.*) G. R. SWAMY v. GOVERNMENT OF MYSORE

16 Mys L J 266 = 43 Mys H O B. 144

MYSORE RAILWAYS ACT (IV OF 1891, as amended in 1919), S. 95—Scope—Failure to pay amount—If criminal offence—Power of Magistrate

to be paid and not any larger sum (*Shankaranarayana Rao, J.*) BORE GOWDA v. THE RAILWAY STATION MASTER, MYSORE RAILWAYS. 16 Mys L J 421

—S. 95 (1) and (4)—*Applicability—Undertaking by passenger to pay fare of fellow passenger—Action under S. 95 (4)—If justified.*

against under
BORE GOWD
MYSORE RAI
MYSORE
OF 1903), S
Admission
of.

Ss 34 and 35 of the Registration Regulation cast on the Registering officer the duty to enquire whether or not the document produced before him was executed by

attend the parties during the registration and see that the proper persons are present, are competent to act, and are identified to his satisfaction. When the person executing a document admits execution thereof before the Registrar, the legal effect is that he enters into obligations under the document. (*Shankaranarayana Rao, J.*) ANDANI SETTY v. CHANNAPPA.

16 Mys L J. 249.

MYSORE REGULATION (VII OF 1923)—Scope—Suit for declaration—Wrongful detention of money by

MYS. T. P. NEGULATION (1918), S. 6.

Government—Suit for recovery and for damages for breach of contract—Maintainability.

A suit against the Government for a declaration is barred by Regulation VII of 1923. But a suit can be maintained against Government for wrongful detention of goods or money or for damages for breach of contract. Regulation VII is no bar to such suits. (*Reilly and Shankaranarayana Rao, J.*) KRISHNA-
GOVERNMENT OF MYSORE

16 Mys L J. 243 = 43 Mys H O B. 208.

Mysore REGULATION (II OF 1923), S. 2—Scope—Darkhast grant of land by Government—Title case

16 Mys L J. 87
MYSORE SMALL CAUSE COURTS ACT (VIII OF 1911) (as amended in 1928), Sch. I, Arts 18 and 22—Applicability—Lease for fixed period—Lease holding over—Suit for ejectment and arrears of rent and damages for use and occupation—Jurisdiction of Small Cause Courts.

Council

The Legislature, by enacting S. 170 of the Town mean to confine the offences under the act. Even a private or an offence under *Shankaranarayana v. CHENNAIPATNA* 16 Mys L J 820 =

—S. 6 (g)—*Scope—Family pension or Pallegar pension—Transferability—Presumption against—If any—Burden of proof*

A family pension or a Pallegar pension cannot be non-transferable as falling under S. 6 regulation. A mere admission that the pension is a Pallegar does not lead to the inference that it is a political pension. It must be shown that the pension falls under any of the heads of pension detailed in S. 6 (g), T. P. Regulation before a transfer of it or a part of it can be impeached. (*Abdul Ghani and Singaravilu Mudaliar, JJ.*) SANKARAPPA v. VENKATANARAYANASWAMY 16 Mys L J. 101 = 43 Mys H O B. 715
—S. 6 (h)—*Scope—Pension—Power of attorney in favour of creditor—Agent authorised to draw out pension and to appropriate part towards debt and to pay balance over to principal—Validity of—If opposed to*

NEG. INSTR. ACT (1881), S. 4.

led to get a credit for the amount paid by him towards the instalments.

Held also, that as all except the last instalments were paid before the note was endorsed, the contract had not remained merely executory. Moreover the agreement by A to pay future instalments towards the debt fund should be taken as an accord and satisfaction to the extent of the amount which he had undertaken to pay and which B had agreed to accept towards the partial discharge of the promissory note. (*Abdur Rahman, J.*)
ELLAPPA CHETTIAR v. SETHA AIYAR.

178 LC 355—A.I.R. 1938 Mad. 897.

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), S. 4—*Applicability—Absence of promise to pay—Mere admission of liability to pay—Promissory note or acknowledgment.*

Where a document merely acknowledges that certain items of money mentioned therein have been borrowed and that the executant has to repay them on demand, it is not a promissory note because it does not contain an unconditional undertaking to pay. There is no promise to pay but only an admission of liability to pay, and hence it is only an acknowledgment. (*Musa, J.*)
KATANJI BHAGWANJI v. PREM SHANKAR.

1938 A.W.B. (H.C.) 599—1938 A.L.J. 907=

1938 A.L.R. 864—A.I.R. 1938 All. 619.

—S. 4—*Promissory note—Document containing promise to pay and not intended to be negotiable.*

A document which acknowledges the receipt of a certain amount by cheque and contains a promise to pay that amount with interest at a certain rate after a certain specified time, is not a promissory note, as it is clearly not intended to be a negotiable instrument. (*Sir George Lowndes*)
KAKAM CHAND v. MIAN MIR AHMAD AZIZ AHMAD 1938 A.L.J. 288= 1938 O.W.N. 326=32 S.L.R. 462=173 LC. 736= 1938 A.W.B. (P.C.) 99=1938 M.A. 336= 1938 A.L.R. 232=1938 O.L.R. 166=47 L.W. 601= 1938 M.W.N. 493=10 R.P.C. 244=4 B.R. 440= 1938 P.W.N. 411=40 Bom.L.R. 1053= 42 O.W.N. 989—A.I.R. 1938 P.C. 121 (P.C.).

—S. 4—*Promissory note—Payee not specified.*

Where a document does not specify the person to whom the money is to be paid nor does it say that it is payable to the bearer, it is certainly not a promissory note. (*Vizian Ruz, J.*)
NAKBADA PKASAD v. M.L. SUNKI 177 IC 889—A.I.R. 1938 Nag. 464.

—S. 8—*Holder—Hindu joint family note in favour of manager—Debt*

Suit by surviving coparceners—

Conditions—Succession Certificate Act, in relation to production of certificate after suit—Sufficiency—Legal representative—C. P. Code, s. 2 (11).

In the case of a promissory note executed in the other part as

NEG. INSTR. ACT (1881), S. 13.

suit. It is enough if it is produced before the decree is drawn up.

Quare—Whether the surviving coparceners of a Hindu joint family are the legal representatives of a deceased manager thereof in respect of coparcenary property within the meaning of S. 2 (11), C. P. Code. (*Broomfield and Macklin, J.J.*)
SHANTARAM VITHAL v. SHANTARAM BHAGWAN. 178 LC 423=

40 Bom.L.R. 964—A.I.R. 1938 Bom. 451.

—S. 9—*Holder in due course—Promissory note by two persons—Payee relinquishing claim against one and agreeing to hold other alone liable—Assigned with notice of arrangement—Rights of.*

If the payee of a promissory note executed by two persons agrees to hold one of them alone liable and relinquishes his claim as against the other executant, and assigns the note to another who takes the assignment with knowledge of this arrangement, the assignee has no better title than his assignor and he can therefore enforce the instrument only against one of the executants

1938 A.L.R. 599—(1938) 1 M.L.J. 757.

—Ss. 9 and 59—*Scope—Promissory note payable on demand—Date of maturity—Test to decide—Notice of demand by holder giving time for payment—Transfer to another before expiry of terms—Transferor—If holder in due course.*

A promissory note payable on demand cannot be regarded as having matured on the date on which it comes into existence. The date of maturity would depend on the circumstances of each case. The test is to ascertain if a demand has been made and refused. Defendant executed a promissory note to G on 29-8-1935. On 7-9-1935, G sent a notice to the defendant demanding payment by 15-9-1935, failing which, it was mentioned, the promissory note would be assigned. On 14-9-1935, G endorsed the note to plaintiff who brought a suit on the same. Plaintiff was not shown to have had any knowledge of the demand made by G. It was found that the defendant sent a reply to G, who got it only on 16-9-1935.

Held, that the promissory note could not be considered to have matured on the date of its transfer to G, the reply sent by defendant to G and delivered to G on 16-9-1935, assuming that it was a notice of dishonour, could not

to the plaintiff on as not affected by Act, but must be used as defined by

S. 9. (*Abdur Rahman, J.*)
SHAHABUDDIN SAHIB v. VENKATACHALAN CHETTIAR. 1938 M.W.N. 897=

48 L.W. 480—A.I.R. 1938 Mad. 911= (1938) 2 M.L.J. 523.

—S. 13—*Pawn ticket—Negotiability.*

Although the debt may promissory note is not survivorship but by success to sue on the note is person can be said to be birth or by being a member the coparceners might from the promissory note. If the holder dies, a succession certificate may be granted it may then recover upon the promissory representative. The succession not a condition precedent to the r

the part of any one to pay the amount mentioned exchange as defined by nor a bond, nor any reporting to entitle any person of any stated

NEG. INSTR. ACT (1881), S. 27.

sum of money, and is consequently not negotiable. (*Mekta, J.*) JHANGALDAS CHIMANDAS v. CHETUMAL BULCHAND. 32 S.L.R. 640—10 B.S. 220—173 I.C. 591—A.I.R. 1938 Sind 24.

—Ss. 27, 28 and 32—Promissory note by manager of Hindu joint family—Indorsement—Right of indorsee to proceed against other coparceners not parties to the note.

An indorsee of a promissory note executed by the managing member of a Hindu joint family is limited to his remedy on the note, unless the indorsement is so worded as to transfer the debt as well and the stamp law is complied with, and, therefore, in the case of an ordinary indorsement the executant coparceners on under the Hindu Law, the law relating to negot whose name does not appear held liable thereon. (*L*)

NEG. INSTR. ACT (1881), S. 115.

Held, that there was no unreasonable delay in presentment and therefore the vendee firm was not discharged from paying the amount of hundis to the vendor firm. (*Tek Chand and Abdul Rashid, J.*) HARNAM SINGH v. NIRKA RAM. 40 P.L.R. 578—A.I.R. 1938 Lah. 183.

—Ss. 70 and 64—Promote—Suit against maker—Presentment, if necessary.

No presentment is necessary in the case of a promissory note which is not payable at a specified place, when the suit is against the maker of the promissory note. (*Bhade, J.*) NANU MAL v. SHIBBA MAL—NAND KISHORE. 40 P.L.R. 975

—Liability of

employees of a
a forged cheque,
make good the

—Ss. 30, 37 and 38—Drawer of hundis—Position of—Nature and extent of liability.

The drawer of hundis is not a surety for acceptance because the drawee does not become liable until he accepts. Therefore unless and until he does that there is no debt for which he can be held responsible. It follows that there is no principal for whom the drawer can stand surety. Therefore when there is no acceptance the liability of the drawer is as principal debtor under an implied contract of indemnity. His undertaking is conditional only and his liability does not arise unless the instrument is dishonoured, either by non acceptance or by non payment. (*Vivian Bose, J.*) DALSUKH NATHMAL v. MOTILAL. A.I.R. 1938 Nag. 262.

—S. 46—Applicability—Successive renewals of prior handnotes—Notes reserving simple interest, but compound interest charged and renewed—Failure of consideration.

Where the original handnote in which only simple interest was reserved, was renewed for the amount of the principal and interest calculated on the basis of compound interest, and the same method was adopted in respect of two later renewals, on a consideration for each renewal had failed the difference between simple and

Held, that the plea was unsustained.

and in
'ort and
'Gir' v.
401—

10 B.P. 403—A.I.R. 1938 Pat. 324.

—S. 66—Applicability—Hundis payable on certain day on which it is drawn—Presentment after three days of date—If unreasonable delay.

Where a handi which is not made payable at a speci-

and the bank was liable for the payment. (*Addison and Abdul Rashid, J.*) P. C. BHANDARI v. PUNJAB NATIONAL BANK, LTD. 40 P.L.R. 663—A.I.R. 1938 Lah. 520.

—Ss. 115 and 116—Drawer in case of need—Liability of—When arises—Previous presentment for acceptance—If necessary—Drawer in the first instance duly accepting bill but failing to pay at maturity—Presentment for payment to drawee in case of need—Liability

when presented for payment at maturity, the holder cannot make the drawee in case of need liable upon the bill unless he has previously presented the bill for acceptance to the drawee in case of need. (*Madia, J.*) J. A. L. DORE v. KARACHIVALLA & CO. 177 I.C. 484—11 B.B. 89—40 Bom.L.R. 473—A.I.R. 1938 Bom. 364.

which it purported to have been drawn in part payment of the unpaid purchase-money. The handi reached vendor firm two days before the date on which it was made payable. The vendor presented it to the drawee three days after the fixed date but the hundis could not be cashed due to the insolvency of the drawee.

OFFICIAL TRUSTEES ACT, 1927.

situate within the province of Bihar which is outside the division of Bengal. The amended Act makes it quite plain that Bihar is now not only a separate Province but a "Division" which must have an Official Trustee of

Lord Williams, J.) TRUSTS OSWALD FORBES v. PHILLIP ARTHUR MCNAUGHT. 12 O.W.N. 942.

OPIUM ACT (I OF 1878), S. 9—Joint criminal possession—If impossible—Recovery of opium from house where three brothers lived together—All, if guilty.

It cannot be said that there can in no case be joint criminal possession, where an excisable article, or article the possession of which is an offence, is recovered from a house or place, jointly possessed by several persons. Each case must be decided on the evidence and it is obvious that as a fact several persons may be in joint criminal possession of an article. Where opium was recovered from a house in which three brothers lived jointly,

Held, that in the circumstances of the case the possession must be considered to be that of only the eldest brother. (*Goldstream, J.*) KARKARA v. EMPEROR. 174 L.C. 789 = 39 Cr.L.J. 480 = 10 R.L. 590 = 40 F.L.R. 12 (2) = A.L.R. 1938 Lab. 320.

ORISSA TENANCY ACT (II OF 1913), S. 4 (3)—Under-ryat—Ryat let in for residential and building purposes—Sub-tenant under—Status of.

For the purpose of determining whether a sub-tenant is an under-ryat as defined by S. 4 (3) of the Orissa

one for any agricultural purposes and for residential and building purposes, it is not a ryat tenancy and the sub-tenant is not an under-ryat. (*Krishna, J.*) SURYANAL SAKA v. DEKAM NAIDU. 1938 F.W.N. 631 = 11 PALL.T. 622.

S. 31 (1)—Construction—"Maximum fee"—Meaning of—Proper fee payable—Determination—Guidance—Guidance fee.

The words "maximum fee" in S. 31 (1) Tenancy Act must be taken as indicating necessarily in every case that the fee should be 25 per cent. as the proper fee, but that in no case should the Court allow more than 25 per cent. In fixing the proper fee payable to the landlord under S. 250 (c) of the Act, if the Court is proved by evidence as long established and the amount would be the S. 31, provided that it

the purchase money. (*As per Lord Krishna Rao, J.*) and it is proved that the landlord and the tenants had been in the habit for some years before 1913 of making and obtaining mutation of names on payment of a certain recognised proportion of the purchase money that amount which was regarded as reasonable by the parties before and in 1913, should properly be regarded as reasonable after the passing of the Tenancy Act as well. S. 31 (1) only lays down a statutory maximum for the registration fee. (*Chandrasekhar, C.J. and James, J.*) KAJA RAMCHANDRA DEB v. FAHIM FAIKANA. 17 Pat. 325.

ODISH ESTATES ACT (1869).

S. 250 (e)—Mutation fee—Proper fee payable. See ORISSA TENANCY ACT, S. 31 (1). 17 Pat. 325. OUDH CIVIL RULES, R. 269-A, Cl. (d)—Annual value—Meaning—Suit for under-proprietary rights in

in the rent at But secretary e rent r proprietor. (*Thomas and Zia ul-Hasan, J.*) JWALA DEVI v. AHMAD HASAN. 172 L.C. 297 = 1938 O.A. 123 = 10 R.O. 168 = 1938 O.W.N. 23 = A.I.R. 1938 Oudh 40.

R. 269-A—Cl. (d) and (e) can be applied together.

Clause (d) of R. 269-A is not exclusive of Cl. (e) and hence Cls. (d) and (e) can be applied together. (*Thomas and Zia ul-Hasan, J.*) JWALA DEVI v. AHMAD HASAN. 172 L.C. 297 = 1938 O.W.N. 23 = 1938 O.A. 123 = 10 R.O. 168 = A.I.R. 1938 Oudh 40.

R. 269-A 1 (b)—Pre-emption suit—Valuation for purposes of jurisdiction.

The valuation of a suit for pre-emption for purposes of jurisdiction should, according to R. 269-A 1 (b) of the Oudh Civil Rules, be thirty times the land revenue. (*Thomas and Zia ul-Hasan, J.*) MANNAJ KUMAR v. HASANT FAI. 171 L.C. 891 = 1937 O.L.R. 579 = 10 R.O. 145 = 1937 O.W.N. 1217.

ODISH COURTS ACT (IV OF 1925) S. 12 (2)—Last day for application under, a holiday—Filing on the next day—If in time.

Where the last day for filing an application under S. 12 (2) of the Odish Courts Act falls on a holiday, it

ODISH ESTATES ACT (I OF 1869), S. 2—"Heir" and "legatee"—Meaning of.

The explanation added by the U. P. Act III of 1910 serves only to make plain what is implicit in the true construction of the Act as it originally stood. The explanation is very simply expressed and almost disguises

the legatee of a legatee. The word "heir" cannot be restricted to those who inherit under S. 22. It is used in S. 23 and applies to every estate whose owner was entered in List I whatever the title of succession. (*Sir*

A.I.R. 1938 F.C. 113 = (1938) 1 M.L.J. 731 (P.C.).

S. 7—Object of—Sanction to movable property—If affected.

The object of S. 7 of the Odish Estates Act is to enable the taluqdar to ensure that the beneficiaries mentioned in the inventory should pass along with the estate in all circumstances, but it does not warrant the inference that the legislature intended that the descent of movable property, for which no inventory was made, should be governed by the ordinary law. Where there is no evidence to prove a custom to the contrary, the

ODDH ESTATES ACT (1869), S. 8.

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sumption is irrefutable in the other it may be rebutted by evidence proving a different rule. (*Sir Shadi Lal*)
HUZUR ARA BEGAM v. DEPUTY COMMISSIONER, GO

ODDH RENT ACT (1880), S. 5.

of succession ad and outside is a question of language used, case in which or part thereof hat the statute in some cases bare general

whether the transferee is an heir apparent, another taluqdar or a younger son. In giving the other taluqdar the same rights as the transferor the Act may have been

S. 8—Holder of primogeniture sanad electing for inclusion in list II—Rule of succession applicable.

The holders of primogeniture sanads who elected for inclusion in list II must be deemed to have rejected, as they were entitled to, the rule of succession laid down in their sanads in favour of the rule of succession which characterises estates included in List II. (*Zia ul-Hasan and Hamilton, JJ*) **SRI RAM v. MAHOMED ABDUL RAHIM KHAN.** 172 I.C. 882=1938 O.L.R. 44=1938 O.A. 96=1938 O.W.N. 67=10 B.O. 200=A.I.R. 1938 Oudh 69

S. 12—Will creating series of life estates—Validity—T. P. Act, S. 14

Where a will and a codicil create a series of life estates in perpetuity, the disposition of property is invalid under S. 12 of the Oudh Estates Act as well as under S. 14 of the T. P. Act. (*Zia ul-Hasan and Hamilton, JJ*) **SRI RAM v. MAHOMED ABDUL RAHIM KHAN.** 172 I.C. 882=1938 O.L.R. 44=1938 O.A. 96=1938 O.W.N. 67=10 B.O. 200=A.I.R. 1938 Oudh 69

S. 13 A (1) and (2)—Person mentioned in, being legatee—His rights and powers—Rule of succession.

S. 7 gives to any person mentioned in Cls (1) and (2) of S. 13-A of the Oudh Estates Act who is a legatee the same rights and powers in regard to the estate as a testator and such legatee holds the estate subject to the same conditions and to the same rules of succession as the testator. (*Zia ul-Hasan and Hamilton, JJ*) **SRI RAM v. MAHOMED ABDUL RAHIM KHAN.** 172 I.C. 882=1938 O.L.R. 44=1938 O.A. 96=1938 O.W.N. 67=10 B.O. 200=A.I.R. 1938 Oudh 69.

S. 14—Effect and object of

In the case of a bequest which is within the retrospective words with which S. 14 opens, and which was made by a taluqdar to a person who would have succeeded according to the provisions of the Act, had they been in force at the time when the succession opened, the consequence attached by the section is that such person "shall have the same rights and powers in regard to the property . . . and shall hold the same subject to the same conditions and to the same rules of succession" as the testator. This provision was intended to indicate how the Act was to take effect upon such

preserve in such cases the same character to the estate as it would have continued to bear if the succession had been as intestate (*Sir George Rankin*). **GAYA BAKSH SINGH v. DEO SINGH** 173 I.C. 825=1938 O.A. 190=1938 O.W.N. 268 (P.C.)=65 I.A. 137=1938 O.L.R. 187=1938 A.L.R. 209=4 B.R. 394=1938 A.L.J. 309=1938 A.W.B. (P.C.) 109=10 B.P.C. 225=32 S.L.R. 433=67 C.L.J. 62=A.I.R. 1938 P.C. 113=(1938) 1 M.L.J. 731.

Ss. 14 and 22—"Heir"—"Legatee"—Meaning of—If confined to next immediate heir or legatee See **ODDH ESTATES ACT, S. 2** 65 I.A. 187=(1938) 1 M.L.J. 731 (P.C.).

ODDH LAWS ACT (XVIII OF 1876), S. 5—Effect—Position of a wife to whom dower debt is due. See **T. P. ACT, S. 53—FRAUDULENT TRANSFER** 1937 O.W.N. 1176.

Ss. 11 to 13—Partial pre-emption—Permissibility

The Legislature in enacting the provisions of the Oudh Laws Act did not take into consideration the case of a composite sale deed in which several distinct properties are sold together for a lump price. Accordingly suits for pre-emption of part of the properties sold which necessarily involve apportionment of price are not maintainable (*Srivastava, C.J.* and *Smith, J.*) **BAJI NATH v. MAHARAJ PRASAD.** 13 Luck. 672=171 I.C. 987=1937 O.W.N. 1202=1938 O.A. 1=10 B.O. 151=A.I.R. 1938 Oudh 37

S. 9—Under proprietor—If can preempt a share of superior proprietary right.

An under-proprietor is not entitled under S. 9 of the Oudh Laws Act to preempt a share of the superior proprietary rights. 61 I.A. 235. Rel. on. (*Thomas and Zia ul-Hasan, JJ*) **MANRAJ KUER v. BASANT TAI** 171 I.C. 891=1937 O.L.R. 579=1937 O.W.N. 1217=10 B.O. 145

ODDH RENT ACT (XXII OF 1886), S. 3 (10)—Applicability—Trespasser assessed to rent by compromise decree See **ODDH RENT ACT, Ss. 53(2) 54, 127 AND 3 (10)** 1938 O.W.N. 980

S. 5—Occupancy rights—Muzaddam recorded as occupancy tenant—Transfer of right of under foreclosure of mortgage—If becomes occupancy tenant—Status—Entry as occupancy tenant in papers—Effect.

ODDH RENT ACT (1886), S. 5.

A transferee of the rights of a muqaddam—the rights being transferred as a result of foreclosure of a mortgage—who is admitted as a tenant by the landlord is only a statutory tenant and not an occupancy tenant. The fact that the transferee is recorded in the papers as occupancy tenant, as his transferor had been so recorded before the transfer, does not make him an occupancy tenant, when there is no evidence that the landlord ever recognised him as occupancy tenant. (*Bomford, J.M.*)

DULARA v. NARAIN SINGH. 1938 R.D. 12=1938 O.W.N. 27=1937 A.W.R. 1213.

—Ss. 5 and 6—Unregistered perpetual lease conferring heritable rights—Value and effect of.

Though the conferment of occupancy rights under S. 6 of the Ouddh Rent Act can only be effected by a registered instrument, yet the concluding paragraph of S. 5 saves agreements in writing between landlord and

—S. 7-A—Deed of gift executed in respect of Sir land—Donor subsequently suing to have it set aside on ground of fraud—Suit withdrawn on payment of consideration by donee—Effect of—Donor, if entitled to expropriatory rights.

Under S. 7-A of the Ouddh Rent Act no expropriatory rights can accrue as the result of a voluntary deed of gift. Where, after a deed of gift in respect of certain Sir lands has been executed as a result of fraud and undue influence, and the suit is compromised and withdrawn on

proprietary rights therefore accrue to the donor in the Sir land in question. (*Darling, S.M. and Bomford, J.M.*)

GHULAM MUSTAFA v. HASIBULNISA. 1937 R.D. 439

—S. 7-A—Expropriatory tenancy—When commences—Date of sale or date of possession.

According to S. 7-A of the Ouddh Rent Act a person becomes an expropriatory tenant as soon as his proprietary rights are transferred. When a person's proprietary rights are sold in Court auction, he becomes an expropriatory tenant of his Sir on that date, and not on any subsequent date when he obtains actual possession. (*Hazan, J.*)

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the mortgagor, and his sons after his death can claim at any time expropriatory rights in the Sir lands and can resist ejectment. (*Darling, S.M. and Bomford, J.M.*)

RAJ BAHADUR SINGH v. SAT NARAIN. 1938 R.D. 481=1938 O.W.N. 485=1938 A.W.R. (B.R.) 272

—S. 19-A—Power to make remissions—Conditions

ODDH RENT ACT (1886), S. 48.

—Fall in prices, if a ground—Resolutions of Local Government—Value.

S. 19-A of the Ouddh Rent Act authorizes the Local Govt. or any authority empowered by it in this behalf to remit or suspend land revenue, and the Collector to remit only on the ground of an agricultural calamity. A fall in prices cannot be said to be an agricultural calamity. It is just the reverse, as prices fall when production is abundant. Any resolution of Local Govt. as to remissions have no legal basis. (*Zia ul-Hassan, J.*)

RAM NARAIN v. CHANDRA SHEKHAR. 175 I.C. 50=10 R.O. 307=1938 O.W.N. 535=1938 O.L.B. 259=1938 A.W.R. (C.C.) 54=1938 R.D. 567=1938 O.A. 663=A.I.R. 1938 Ouddh 158.

—S. 33—Defendant's ancestor declared Sir holder in 1869—Status of defendant—Liability of his rent to enhancement.

His rent is, therefore, not liable under S. 33 of that Act. (*Darling, S.*)

BAHADUR KHAN v. SUBHKARAN. 1938 R.D. 195=1938 A.W.R. (B.R.) 122=1938 A.A. 229=1938 O.W.N. 165.

—Ss. 33 and 35—Scope of—Rent of holding governed by S. 79 of Land Revenue Act—Liability to enhancement.

Where a holding is governed by S. 79 of the U. P. Act, it is not governed by S. 33 of the Ouddh Rent Act. (*EN.*)

DRA PRATAP SINGH v. CHANDRA PAL. 1938 O.W.N. 451=1938 R.D. 403=1938 A.W.R. (B.R.) 280.

As a partition does not create a fresh contract of tenancy, if ten years have been completed, the benefit of Ss. 36 and 37 cannot enure in favour of the tenants, and they are liable to be ejected. (*Mukta, J.M.*)

BADRI PRASAD v. RAJENDRA SINGH. 1938 A.W.R. (B.R.) 266=1938 R.D. 770=1938 O.W.N. 955=1938 A.L.J. (Supp.) 89.

—S. 39—Assessment to wet rate—Holding becoming wet since last settlement—Fair and equitable rate if can be applied.

Where an assessment to wet rates is contested

excess of the fair and equitable rate payable by statutory follows that where the rate becomes entirely wet, it had been framed on the basis of rates which are payable rate payable. (*Darling, S.M. and Bomford, J.M.*)

RAMESHWAR v. BENARI SINGH. 1938 O.W.N. 80=1938 R.D. 23=1938 O.A. 160=1938 A.W.R. 23 (B.R.).

—S. 48—Widow of statutory tenant recorded as Sir in presence of sons—Zamindar's right to sue widow alone for ejectment.

ODDH RENT ACT (1886), S. 52.

Where the widow of a statutory tenant is recorded on his death as his heir, although he has left sons, the

Ouddh Rent Act for ejectment, costs payable is included in it. On a certain date, there is nothing as for S 4 last clause allows an tenant to contract himself out of the provisions of the Act. As such if the tenant failed to pay the entire amount including costs as agreed, the ejectment of the tenant is not illegal and the remedy under S 108 (10) is not available. (*Mehta, J. M.*) BALLU SINGH v. UMA SHANKAR. 1938 E.D. 761 (1) = 1938 O.W.N. 934 = 1938 A.W.R. (B.R.) 380.

—Ss. 52 and 108 (10)—Deposit within time, in form of compromise. *Mehta, J. M.* in calculation—Fixed.

the total decretal amount, interest, and costs, on a judgment under these circumstances is illegal because no occupancy tenant could be ejected from land otherwise than in execution of a decree for arrears of rent, and a suit under S 108 (10) of the Rent Act lies (*Mehta, J. M.*) MAHARAJA v. MAHABIR 1938 E.D. 772 (1) = 1938 O.W.N. 956 = 1938 A.W.R. (B.R.) 267 (2) =

—Ss. 52 and

for ejectment within time—Power of Courts.

Where a suit under S. 108 (4) read with S. 52 of the Ouddh Rent Act is compromised and a consent decree for ejectment with a period of grace is passed, on the expiry of that period of grace, the decree for the ejectment of the judgment-debtor becomes operative and no

Landlord's remedy against tenant.

Where a tenant is holding land on rent and the rent was favourable by reason, the landlord could not eject the statutory tenant but must proceed under the resumption chapter of the Ouddh Rent Act (*Darling, S. M. and Mehta, J. M.*) HUB LAL v. DWARKA NATH 1938 E.D. 749 = 1938 O.W.N. 901 = 1938 A.W.R. (B.R.) 378

—Ss. 53 (2), 54, 127 and S. (10)—Trespasser assessed to rent by compromise decree—If a tenant—Liability to ejectment by notice.

Where a suit under S. 127 of the Rent Act is compromised and the trespasser is assessed to a certain rent payable within a particular time, such a trespasser has merely agreed to pay rent for the period of his trespass; he is under no contract for the payment of rent in the future and he is not liable to pay rent within the mean

ODDH RENT ACT (1886), S. 67.

ing of the definition of a tenant in S. 3 (10) In such a case the trespasser is not a tenant within the description

can be served with a notice of f the Act. The trespasser can at after the period agreed, for *Mehta, S. M.*) PIRTHWIPAL NGH. 1938 O.W.N. 980 = 1938 E.D. 793. cope—Mandatory—Non compli. See ODDH RENT ACT, S. 108 A.W.R. 1211 = 1937 E.D. 564. as between joint proprietors—ing proprietary interest—Status

joint proprietors, the entire allage fell to one of them, by sufferance and had no *in or khudkasht* status, his position is that of a mere trespasser tenant and on non-payment of rent is liable to be ejected. (*Mehta, J. M.*) RAM LAL v. JAI DEVI. 1938 E.D. 750 = 1938 O.W.N. 904 = 1938 A.W.R. (B.R.) 376.

—S. 61—Right to apply under—Arrears fully realised.

Though no doubt a landlord is entitled even after ejectment to realise his arrears, he is certainly not to realise the Rent Act and that the decree *J. M.*) HARI

1938 E.D. 768 = 1938 O.W.N. 931 = 1938 A.W.R. (B.R.) 393

—S. 62 A (1) (b)—Ejectment under—Facts to be proved.

According to S. 62-A (1) (d) of the Ouddh Rent Act, in order to entitle a landlord to eject a statutory tenant,

S. 62 A, If the sub-lessees are not in possession contrary to law at the time of the institution of the suit (*Darling S. M. and Mehta, J. M.*) LALTU v. BIJAI RAJ KUAR. 1938 O.W.N. 746 = 1938 E.D. 669 =

1938 A.W.R. (B.R.) 265 = 1938 A.L.J. Supp. 101.

—Parties to

(d) of the Zamindars and whose It is not is recorded at bad because the other tenant are not included (*Bomford, J. M.*) BAJ MATA BHIKH. 1938 E.D. 136 = 1938 A.W.R. 74 (B.R.).

—S. 67 (1) (b)—Notice of ejectment—Plot found to be grove-land—If to be excluded

Where a plot is found to be grove-land by the Courts, and there are found to be enough trees on the plot as recorded in two settlements to give it the character of a grove, such plot should be excluded from the operation of a notice of ejectment under S. 67 (1) (d), as being the grove-land of the tenant. (*Darling, S. M. and Bomford, J. M.*) BAJRANG BAHADUR SINGH v. MATA BHIKH. 1938 E.D. 136 = 1938 A.W.R. 74 (B.R.)

—S. 67 (1) (b)—Notice under—Cancellation—Right to apply—Family acquiring under-proprietary rights—Record in the name of one member alone—

OUDH RENT ACT (1938), S. 67.

Member in whose name it is not recorded, if can apply for cancellation of notice against him.

Where under-proprietary rights acquired by a joint Hindu family are recorded in the name of one of the members alone, another member against whom a notice of ejectment is issued under S. 67 (1) (b) of the Oudh Rent Act, cannot get it cancelled on the ground that his name is not recorded. His interest cannot be denied though his name might not have been recorded owing to an error. (*Darling, S. M. and Bonford, J.M.*) BHAWANI SINGH v. SHED SINGH.

1938 E.D. 358 = 1938 O.W.N. 375 =

1938 A.W.R. (B.R.) 197.

—S. 67 (1) (b) Under-proprietor, given a permanent lease after the coming into force of the amended Act—If protected from ejectment.

Where on the date when the amended Act came into force, a person was an under-proprietor, he cannot acquire statutory rights in the village in which he has under-proprietary rights. Such a person though he is given a permanent lease by the Talukdar after such date, is a non statutory tenant and is liable to ejectment. (*Darling, S. M.*) JAFAR, S. BHAI PRASAD.

1938 O.W.N. 449 = 1938 E.D. 424 =

1938 A.W.R. (B.R.) 278.

—S. 68—Person holding under thekama executed by proprietary tenant—If can be ejected as sub-tenant within the period of thekha.

sub-lessee is clearly excluded from treating him as sub-tenant from year to year. He could not be ejected before the expiry of the thekha or the thekama is declared by a Civil Court to be of no legal effect. (*Mishra, S. M. and Harper, J. M.*) KUNJ BHABHAI LAL v. RAGHURAJ DAVAL.

1938 E.D. 530 =

1938 A.W.R. (B.R.) 339 = 1938 O.W.N. 1144.

—S. 68-A—Suit to eject statutory tenant for illegal sub-letting—Death of tenant during pendency of suit—Adding of minor son—Suit if can be decreed against him.

Where in a suit to eject a statutory tenant on the ground that the holding had been illegally sublet, the tenant dies during its pendency and his minor son, is substituted for him on the record, the suit cannot be decreed for the reason that the minor is not liable to ejectment merely for sub-letting by virtue of S. 68-A of the Oudh Rent Act. (*Darling, S. M.*) RAJRANG BHADUR SINGH SANTO PRASAD.

1938 O.W.N. 449 = 1938 E.D. 423 =

1938 A.W.R. (B.R.) 282 (1).

—S. 107 B—Rent when favourable.

Rent is supposed to be favourable when it is less than the revenue payable plus cess. (*Darling, S. M. and Vile, J. M.*) HUB LAL v. DWARKA NATH.

1938 E.D. 748 = 1938 O.W.N. 901 =

1938 A.W.R. (B.R.) 378.

—S. 108 (4) and (10)—Tenant ejected for failure to satisfy decree for rent—Amount of decree subsequently reduced on appeal—Tenant applying to be restored to possession—Proper remedy—C. P. Code, Ss. 144 and 151.

Where a tenant was ejected by a suit under S. 108 (4) read with S. 61 of the Oudh Rent Act for failure to satisfy the decree for arrears of rent, but after the ejectment the amount of the decree was reduced on appeal, the tenant cannot on the strength of the appeal

OUDH RENT ACT (1886), S. 103.

late judgment, ask the possession of the holding to be restored to him under S. 144 or 151, C. P. Code. His remedy lies by way of a suit under S. 103 (10) of the Oudh Rent Act. (*Darling, S. M.*) KEDAR NATH v. BIRENDRA LAKRAM SINGH.

1938 E.D. 173 =

1938 O.A. 227 = 1938 O.W.N. 150 =

1938 A.W.R. (B.R.) 103.

—Ss. 103 (8) and 127—Notice of statement—Denial of the occupancy rights of plaintiff—Absence of any sub-tenancy—Status of defendant—Liability to ejectment.

Where a transfer of occupancy rights in favour of the plaintiff's predecessor has been given effect to in the khatami and had been all along accepted by the defendant and before him by his predecessors who had transferred the occupancy rights, it is not open in a suit to contest the notice of ejectment to plead that there was no transfer of occupancy rights in favour of the plaintiff's predecessors. The proper remedy is to set aside the transfer in the Civil Court. In the absence of that the defendant cannot resist ejectment as a trespasser. (*Darling, S. M. and Marsh, J. M.*) RAMPHUR v. BUDHAI MURAD.

1938 A.W.R. (B.R.) 263 =

1938 E.D. 711 = 1938 O.W.N. 786

—S. 103 (3)—Suit under—Major treated as owner and father's name wrongly given—Misleading him, if retailer notice—Absence of prejudice.

Where a notice of ejectment treated a person as a

KUNWAR.

1938 A.L.J. (Supp.) 100 =

1938 O.W.N. 929 = 1938 E.D. 781 =

1938 A.W.R. (B.R.) 394.

—S. 108 (8)—Suit under—Superintendence of occupancy tenant, over the tenants actually cultivating—Payment of rent to occupancy tenant—Sub-tenants, if can resist ejectment.

Where an occupancy right is created over the head of the cultivating tenants in possession, and these tenants pay rent to the occupancy tenant, they are liable to be ejected as sub-tenants and cannot succeed in a suit to contest the notice of ejectment. (*Darling, S. M.*) NATA PRASAD v. JADUNATH KUNWAR.

1938 A.L.J. (Supp.) 80 = 1938 O.W.N. 929 =

1938 E.D. 781 = 1938 A.W.R. (B.R.) 394.

—Ss. 103 (9) (c) and 103 (10)—Compensation for forcible dispossession—Suit for—Cause of action—Starting point—Proper procedure.

Prima facie when a landlord takes forcible possession of a tenant's field, the cause of action for a suit under S. 103 (9) (c) of the Rent Act arises on that very date. There is no reason why the dispossessed tenant should not sue at the same time under both Ss. 103 (10) and S. 103 (9) (c) of the Act. (*Darling, S. M. and Bonford, J. M.*) RUDILAKSHY v. SUDHITA.

1938 E.D. 375 = 1938 O.W.N. 373 =

1938 A.L.J. (Supp.) 88 = 1938 A.W.R. (B.R.) 215.

—S. 103 (10)—Applicability—Illegal ejectment—Encumbrance under decree not in conformity with S. 10 (2) a)—Tenant's right to sue under S. 103 (10).

Legal ejectment does include ejectment by a process of law if the process used is wrong. Under the mandatory provisions of S. 60 (2) a) of the Oudh Rent Act, it is for the landlord to see that the decree is properly prepared and that the tenant is not left in doubt as to the exact amount which he has to pay in order to escape ejectment. If the decree does not show the

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exact amount of interest due, the ejectment of the tenant under such a decree is technically an illegal ejectment which gives the tenant a right to sue under S. 108 (10) of the Act. (*Darling, S. M. and Bomford, J. M.*) KHURSHEDUNNISA BEGAM v. HEMRAJ.

1938 O.W.N. 101=
1937 R.D. 564=1937 A.W.R. 1211.

—S. 108 (10)—Illegal ejectment under S. 52 of the Rent Act—Suit under S. 108 (10) if lies. See OUDH RENT ACT, SS. 52 AND 108 (10).

1938 A.L.J. (Supp.) 90.

—SS. 108 (10) and 127—Remedy of ejected pro-

ejected under S. 127 of the Act (*York, J.*) SHEIKH BARSATI v. SARJU PRASAD 1938 R.D. 855=
1938 O.A. 823=1938 A.W.R. (O.C.) 104=
1938 O.L.E. 486=1938 O.W.N. 1074

—S. 108 (10)—Scope—Tenant illegally ejected—Subsequent introduction of new tenants by landlord—Suit by tenant for possession in Revenue Court—Main-tainability—Rival tenant—If necessary parties

A tenant who has been illegally ejected by his land-lord by a wrong process of law has a right to recover possession by way of a suit in the Revenue Court under Cl (10) of S. 108 of the Oudh Rent Act against the landlord. He is not bound to implead as parties to the suit subsequent lessees introduced by the landlord after the illegal ejectment, which is the cause of action. Nor is the tenant bound to go to the Civil Court for redress merely because a new set of rival tenants have been introduced subsequent to the ejectment complained of. (*Darling, S. M. and Bomford, J. M.*) KHURSHEDUN-NISA BEGAM v. HEMRAJ 1938 O.W.N. 101=
1937 A.W.R. 1211=1937 R.D. 564

—S. 108 (15)—Suit by co-sharer against lambardar for share of profits—Lambardar, if can be debited with profits of land held by other co-sharers in excess of their share.

In a suit by a co-sharer against the share of profits, the lambardar cannot the profits of lands held by other co-sh their proper share, because a lambardar as such is not competent to sue his co-sharers for recovery of such excess profits either as profits or as rent. (*Srivastava, C. J. and Smith, J.*) MUNIR AHMAD v. ANINA BIBI 1938 R.D. 263=1938 A.W.R. (O.C.) 24=
1938 O.A. 152=1938 O.W.N. 181.

—S. 108 (15)—Suit for profits against lambardar—Lambardar not assessing rent on ex-proprietary tenancy

rent assessed does not entitle a co-sharer to obtain a decree for profits against him on gross rental. (*Hamilton, J.*) MUNIR AHMAD v. ABDUL KHALIQ 1938 R.D. 388=1938 O.W.N. 306=
1938 M.A. 478=1938 A.W.R. (O.C.) 34

—S. 108 (15)—Suit for profits—Mortgage by co-

OUDH RENT ACT (1886), S. 129.

single unit and if they had together received more profits than they were entitled to, then decree the suit (*York, J.*) BISHESHWAR SINGH v. GAVA BAKSH SINGH 177 I.C. 196=1938 O.L.R. 390=1938 R.D. 765=
11 R.O. 32=1938 A.W.R. (O.C.) 90=
1938 O.A. 649=1938 O.W.N. 878=
A.I.R. 1938 Oudh 227.

—S. 108 (15)—Suit under—Ex-proprietary rent not assessed—Lambardar, if liable for profits in respect of ex proprietary land.

It is not the exclusive duty of the lambardar to apply for the assessment of ex-proprietary rent and if such rent is not assessed, co-sharers are as much to blame as the lambardar. A lambardar cannot, therefore, be charged with negligence for not getting ex-proprietary rent assessed and consequently cannot be made liable to the co-sharer suing under S. 108 (15) of the Oudh Rent Act for any profits in respect of the ex proprietary land. (*Sri-
vastava, C. J. and Smith, J.*) MUNIR AHMAD v. ANINA BIBI 1938 R.D. 263=
1938 O.A. 152=1938 A.W.R. (O.C.) 24=
1938 O.W.N. 181.

—S. 127—Holding of deceased occupancy tenant in possession of his relation who is not his legal heir—Landlord's right to eject him.

A person who is related to a deceased occupancy tenant cannot claim possession of the holding when the legal heir is in existence. The landlord can very properly bring a suit under S. 127 of the Oudh Rent Act against him, whether or not the legal heir has actually surrendered the holding in favour of the landlord (*Zia ul-Hasan, J.*) BISHWA NATH SARAN SINGH v. SRI NARAIN SINGH 173 I.M. 618=
1938 A.W.R. (O.C.) 25=1938 O.L.E. 124=
10 R.O. 223=1938 O.A. 204=1938 O.W.N. 225=
1938 R.D. 504=A.I.R. 1983 Oudh 98

—S. 127—Remedy of ejected proprietor—Suit in Civil Court, if lies. See OUDH RENT ACT, SS. 108 (10) AND 127. 1938 O.A. 823=1938 O.W.N. 1074.

—S. 127—Suit under—Defendant making claim to proprietary right—Party to be referred to Civil Court.

If a party makes a claim to proprietary right and it which has been en it as for the to establish the / on S. 127 of the Oudh Rent Act. Where, therefore, in a suit under S. 127 of the Act, it appears that the defendants have accepted without demur the entries in three settlements which give the proprietary title in the suit land to the plaintiff and record them as mere grove-holders or as tenants without fixation of rent, and the defendants fail to prove that they have on any occasion asserted any proprietary right in this area, their claim to proprietary rights in

—S. 129—Applicability—Ex-proprietary rights—Claim to—Enforcement—Limitation—U. P. Land Revenue Act. See U. P. LAND REVENUE ACT, S. 36 1938 A.W.R. (B.E.) 104=1938 R.D. 168

—SS. 129 and 132—Applicability—Revenue paid for joint lambardar—Suit for compensation—Limita-tion.

Where a suit is for compensation for revenue paid by the lambardar on account of a joint lambardar, it is covered by the third part of Cl 16 of S. 108 of the

ODDH RENT ACT (1886), S. 132.

Odh Rent Act and such a suit is governed not by S. 132 but by S. 129 of the Act and should be instituted within one year from the date of the accrual of the cause of action. (*Thomas, C. J.*) **REJENDRA BAHADUR SINGH v. RAJA SRIPARTAP BAHADUR SINGH.**

1938 O.W.N. 831=1938 A.W.R. (C.C.) 79=

1938 O.A. 629=1938 R.D. 737=

1938 O.L.R. 386=177 I.O. 191=

11 R.O. 31=A.I.R. 1938 Odh 260.

—S. 132—Applicability—Suit for compensation for revenue paid for joint lambardar. See ODDH RENT ACT, SS. 129 AND 132.

1938 O.A. 629=1938 O.W.N. 831.

ODDH SETTLED ESTATES ACT (1917), S. 15—

"To be or to have vested"—Interpretation.

It would be contrary to a sound construction that the words "to be or to have vested" in S. 15 of the Odh

PARSI MARRIAGE AND DIVORCE ACT (1936), S. 40.

—Deed by—Burden of proof—Proof of independent advice—If necessary.

In an action by an old pardanashin lady to set aside a deed of gift executed by her in favour of the defendant, it is for the defendant to discharge the onus of showing that the plaintiff really understood and intended to execute the deed of gift, but it is not necessary to prove independent advice. (*Lord Maugham*.) **SIKANDAR BEGAM v. ZULFIKAR WALI KHAN.**

172 I.O. 720=42 O.W.N. 332=1938 O.L.R. 66=

1938 A.L.R. 80=1938 A.W.R. 33 (P.O.)=

47 L.W. 214=1938 O.W.N. 87=

1938 A.L.J. 178=1938 P.W.N. 166=4 B.R. 272=

10 B.P.O. 167=1938 O.A. 247=1938 M.W.N. 503=

40 Bom.L.R. 697=32 S.L.R. 285=

A.I.R. 1938 P.C. 33 (P.O.).

—Deed by—Onus of proof.

ODH
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Court can

not presume

that the

plaintiff is

an under

proprietor

under the

provisions

of the above

rule.

(Srivastava, C. J. and Hamilton, J.)

BABU RAM v.

TRIBHAWAN BAHADUR SINGH.

possession of the bulk of the land in suit at a uniform rent from the time of the first settlement and that his ancestors had been old proprietors of the village, the Court can not presume that the plaintiff is an under proprietor under the provisions of the above rule. (*Srivastava, C. J. and Hamilton, J.*) **BABU RAM v. TRIBHAWAN BAHADUR SINGH.**

172 I.O. 107=

1938 A.W.R. (C.C.) 7=1938 R.D. 151=

10 R.O. 151=1937 O.W.N. 11

PARDANASHIN LADY—Died by—Binding

ruler—Duty of Courts in deciding.

The rule is firmly established that it is incumbent on a Court when dealing with the disposition of her property by a pardanashin lady, to be satisfied that the transaction was explained to her and that she knew what she was doing. Where a Mah. lady was admitted by a pardanashin lady unable to read was no evidence to show that she knew the contents of a mortgage deed which she signed in a house liable for the land's debt, it was held it was not possible to hold that her liability had been established. (*Sir Shadi Lal*.)

PEOPLE'S BAN

GHULAM JAN.

1938 O.A. 7

judge of the Court and the delegates who are appointed to aid him in the adjudication of cases. The word "Court" is promiscuously used throughout the Act, but it cannot be read as including the delegates in all cases. Some confusion has crept into the Act by the use of the word "Court" promiscuously, but under the cleavage of functions under the Act, the word must be read in its context in order to determine whether it includes both

MEHERDAL.

174 I.O. 591=10 B.R. 468=

40 Bom.L.R. 50=A.I.R. 1938 Bom. 185

—S. 39—Jurisdiction—"Court"—Application

to hear—Judge alone or Judge

res. See PARSI MARRIAGE AND

2 (2) AND 39. 40 Bom.L.R. 50.

—Personal order for

permanent alimony—Re-marriage of wife—Effect—Res-

triction of order—If a matter of course—Discretion of

the Court for permanent alimony not secured

by the husband's property falls under Cl.

Cl. (a) of sub-section (1) of S. 40 of

the Parsi Marriage and Divorce Act. The Condition

"while she remains chaste and unmarried" is inserted in

1938 P.W.N. 880=178 I.O. 773=

A.I.R. 1938 P.C. 276=(1938) 3 M.L.J. 902 (P.O.)

PARTITION.

Cl. (a) and not Cl. (d). Therefore, though in the case of a secured alimony the order would cease to operate on the wife's remarriage, in the case of a personal order no such result would follow unless the order contains a provision that it is to cease to operate on her remarriage. It cannot be held that a remarriage is, by itself, a

rescinded. That would depend on the circumstances of

91-100.

PARTITION—*Abadi* &

Partition of one of such

can be divided among co-owners of one man's or one woman's partitioned.

Where an application is made for the partition of a mahal holding abadi area jointly with other mahals, the

J. M.) BRIJ BASI RAI v. JHAGROO RAI.

1938 B.D. 327-1938 A.W.R. (B.R.) 171.

Declaration of acquisition of under-proprietary rights, by Civil Court—Names not recorded in khewat—Right to separate path.

Where the Civil Court had declared that certain persons have acquired under-proprietary rights by adverse possession in certain plots, these under proprietors are entitled to have their under proprietary plots separated in a distinct path. (*Darling, S. M. and Bomford, J. M.*) RAM BUX SINGH v. BALDEO SINGH.

1938 B.D. 426-1938 A.W.R. (B.R.) 308.

Holding—Division—Considerations to be taken

1938 A.W.R. (B.R.) 205-1938 B.D. 650 (2)

Parties to—If can challenge entries.

Where the partition so far as the parties were con-

PARTITION ACT (1893), S. 4.

Decrees may be partly preliminary and partly final. If in a partition suit a preliminary decree is passed providing for payment of a maintenance allowance to a widow who is a party to the suit, the decree so far as it relates to the payment of that allowance is quite final and can be executed by the widow, although no final decree has yet been passed in the suit. (*Zia-ul Hasan and Hamilton, J.J.*) SRI KRISHN V. JAMNA NARAIN.

173 I.C. 980-10 R.O. 248-

1938 O.W.N. 348-1938 O.A. 240-

1938 O.L.R. 154-A I.R. 1938 10ndh 103.

Procedure—Mahal held jointly with other mahals.

HARERS—PARTITION.

1938 B.D. 243.

proceedings for—Lease during pendency of—

Duty of landholder as to fair rent.

1938 A.W.R. (B.R.) 144-1938 B.D. 285.

Refusal—Likelihood of formation of small patti—If a valid reason.

Suit for—Rules as to.

The ordinary rule is that a suit for partition must embrace all joint properties owned by the parties thereto. But there is also the complementary rule that a suit for partition cannot include properties in which each of the parties does not claim an interest. (*Beckett, J.*) RISAL SINGH v. CHANDGI.

40 P.L.B. 767.

PARTITION ACT (IV OF 1893), S. 4—Applicability—“Undivided family”—Meaning of

S. 4 of the Partition Act applies to all subjects of British India, whether Hindus, Mahomedans or Christians; the term “undivided family” means a family which is undivided in respect of the house or dwelling which owns the house

Lall, J.) BABU

111-10 R.P. 355-

937 P.W.N. 902-

I.R. 1938 Pat. 13.

Court—Power to act

Partition Act means includes an appellate

Court; an appellate Court has therefore power to act under the section though no such application has been made in the trial Court. An application may be made

pellate Court, and it also is bound in

Lall, J.) BABU

88-10 R.P. 855-

937 P.W.N. -

I.R. 1938

Meaning of.

A “dwelling-house” in S. 4 of 1 not only the house itself but

and

for payment of maintenance to widow—Execution before final decree—Permanency.

PARTNERSHIP

tenances which are ordinarily and reasonably necessary for its enjoyment. The Court must therefore make a valuation of such land and appurtenances also, if any. (*Manohar Lal, J.*) **BARU LALL TIWARI v HULLA MALLAH**, 172 I.C. 835 = 4 B.E. 188 = 10 R.P. 355 = 18 Pat L.T. 866 = 1937 P.W.N. 902 = A.I.R. 1938 Pat 13

PARTNERSHIP. See also (1) C. P. CODE, O. 30, (2) **PARTNERSHIP ACT**.

Advance by partner,
Agreement,
Change in firm,
Death of partner,
Dissolution
Factory,
Hindu joint family,
Interest
Rights of partners inter se,
Suit against partners.

—*Advances by the partner to another for the*

The creditor partner is in no better position than other ordinary creditors of the debtor partner entitled to any priority over the (Lord Romer) **NAND KISHORE v. ?**

—*Suit for general accounts if necessary.*

If a partner makes an advance to the partnership on a promissory note, he can recover it from his partners without general accounts of the partnership being taken. It is not correct to say that no suit could lie on the note if the parties had partnership dealings. (*Weston J.*) **KALU RAM v. BHOJ RAJ** 1938 A.M.L.J. 11.

—*Agreement of—If and admission of parties—*

An agreement of partner can arise out of a mutual consistent course of conduct, and indeed, by the express admission of the parties concerned. (*Bow, J.*) **HIAJI ISA HIAJI NOOR v. SARU BAI** 177 I.C. 831 = A.I.R. 1938 Nag. 324.

change in the
UKUMCHAND

4 B.E. 599 =
1938 A.L.R. 407 = 174 I.C. 875 =
(1938) M.M.L.J. 966 (P.C.)

—*Death of a partner—Rights of representative—His remedy.*

When a partner dies, his representative has an interest in and a lien upon the partnership assets and can claim a taking of accounts as upon dissolution

PARTNERSHIP—Rights of partners inter se.

It is quite clear from a consideration of the history of partnership law that when one person conducts himself in matters relating to the partnership business so that it is not reasonably practicable for his partners to carry on business in partnership with him, the Court may dissolve the partnership and should, in doing so, fix the date on which that conduct has rendered it impossible for the relation of partnership to continue to subsist. (*Robert, C. J. and Braund, J.*) **MIYA BHAI v. MARIAN BEE DEF.** A.I.R. 1938 Rang 478.

—*Dissolution—Right of partner to sue for his share of separate part of partnership assets.*

After dissolution, until the accounts of the partnership are completely settled, individual partners cannot sue for their share of any separate part of the partnership assets. Such suit will lie if the partnership has been completely wound up and the asset has become available to the partnership thereafter. (*Addison and Abdul Rashid, J.J.*) **SONUN RAM MUKHI LAL CHAND v. SEWA RAM.** 178 I.C. 53 = A.I.R. 1938 Lah. 259.

—*Firm styled as factory—Partners' right in*

MISSION & CO. INCOME TAX. I.L.R. 1938 All 838 = 1938 A.W.R. (H.C.) 525 = 4 B.A. 186 = 177 I.C. 260 = 1938 A.L.R. 727 = 1938 A.L.J. 610 = A.I.R. 1938 All. 452.

—*Hindu joint family a partner with strangers—Suit by a coparcener for his share on the basis of dissolution before suit—Denial of dissolution—Main.*

suit, but was denied by the other side.

Held, that such a suit could not be dismissed as being unsustainable without deciding the question as to whether the partnership was dissolved or not.

Held further, that when family assets are in the hands of strangers any member of the family has a right to recover his share of the assets, and if it is necessary for such a purpose to take an account, such account has to be taken by the Court at the instance of the plaintiff. (*Pandurang Rao and Venkataramana Rao, J.J.*) **SANRASIVA IYER v. NATTSA IYER.** 176 I.C. 821 = 11 B.M. 167 (2) = 1938 M.W.N. 22 = A.I.R. 1938 Mad 385 = (1938) 1 M.L.J. 106.

—*Interest—Right to—Advances by partner. See*

PRINCIPAL AND AGENT—SUIT FOR ACCOUNTS
A.I.R. 1938 Mad. 38.

PARTNERSHIP—Suit against Partners.

only remedy between partners is one for partnership accounts. (*Lord Williams and Jack, J.J.*) **GHISULAL GANESHILAL v. GUMDHIRMULL.**

A.I.R. 1938 Cal. 377.

family business and also a partnership business. Where therefore the business carried on by certain persons, is a partnership business carried on by only some members of the joint Hindu family as partners, the other members of the family who are not interested in the business as partners cannot be made liable in respect of a loan borrowed for the partnership business, on the footing that the business is a joint Hindu family business. (*Mosely and Dunkley, J.J.*) **GOPIRAM.**

before there can be a partnership in respect of a single

A.I.R. 1938 Nag. 650.

—Ss. 4, 5 and 6—*Association of men for business*

—*Inference—Things necessary to constitute partnership.*

one person who actually conducts the business also on behalf of all his associates, that is to say, on behalf of all who are joint proprietors with him. He does not act for his own separate and exclusive benefit. His intention is obviously to further the business as a whole for the benefit of all who own the concern. That is all that is necessary to constitute a partnership within the meaning of Ss. 4, 5 and 6 of the Partnership Act. (*Boss, J.*) **HAJI ISA HAJI NOOR v. SARU BAI.** 177 I.C. 631—**A.I.R. 1938 Nag. 324.**

PARTNERSHIP ACT (1894), S. 69.

—Ss 4 AND 5—*Joint Hindu trading family—Partition suit—Agreement to carry on business as before until final decree—Partnership, if can be inferred—Loan contracted by one branch of family—Liability*

T. R. (1938) 1 Cal. 369.
Firm—Firm started

Hindu family firm can
business has descended
wrong. There is no
the members of a
business out of joint

tends at any time, after the death of their father, or other ancestor. Such a firm is exempt from registration under S. 5 of the Partnership Act. (*Tek Chand, J.*) **DEBI SAHAI v. GILLU MALL.** 177 I.C. 918—40 P.L.R. 456—**A.I.R. 1938 Lah. 563.**

—Ss. 32, 33 and 45—*Severance of partner—Absence of public notice—Liability of firm for the outgoing partner's transactions.*

a firm may have
continue to be
partner made with
severance is given
third party was aware of the
of the transaction. (*Mitra, J.*)

PREM SHANKAR
1938 A.W.R. (H.C.) 599—1938 A.L.J. 907—
4—**A.I.R. 1938 All. 619.**
of accounts—Rights of

the account books of the
order to discover what
nership, the examination
barred out by the plain-

(*Beckett, J.*) **RAM SUKH MAL v. HAR SAHAI MAL.** 40 P.L.R. 753—**A.I.R. 1938 Lah. 758.**
—S. 46—*Suit for accounts—Right of returning*

have already inspected the accounts of the firm. (*Beckett, J.*) **RAM SUKH MAL v. HAR SAHAI MAL.** 40 P.L.R. 753—**A.I.R. 1938 Lah. 758.**
—S. 69—*Applicability—Contract of lease between partners—Partnership not registered—Suit by one against others for rent under lease—Maintenance.*
A suit by a person alleged to be a partner to recover the rent due to him by the other partner or partners under a contract of lease is barred and not maintainable if the partnership has not been registered, in v/c

PARTNERSHIP ACT (1932), S. 69.

PATENT.

a right arising from a contract*, within the meaning of S. 69 (3) of the Partnership Act. The right of a creditor to file an insolvency petition against his debtor is a right conferred upon him by statute and is not a right arising out of a particular contract of loan between the petitioning creditor and the debtor. The fact that the creditor happens to be a firm and that a suit to recover

—S. 69 (2)—*Suit by unregistered firm—Subsequent registration and amendment of plaint—Effect of.*

A suit by an unregistered firm to enforce a right arising from a contract is barred by the provisions of S. 69 (2) of the Partnership Act. A subsequent amendment of the plaint after getting the firm registered cannot relate back to the date of institution so as to cure

—S. 69—*Suit by firm—Pla. firm is registered—Neither defendant—Suit, if can be dismissed on, was not proved.*

rms, and
in the
Legisla-
tion in

—Ss 69 (2) and

*copy note in favour of,
on after Act—Firm not
of suit—If saved by S. 74.*

On a promissory note executed to a firm on 12-8-1931, a suit was instituted on 23-8-1934, the plaintiff firm relying on a payment made towards the he suit partner—1934. plead S. 69 (2) of the Partnership Act as a bar to the suit but they raised that objection a year later, i.e., in November 1935.

Held (by Varadachariar, J., on a difference between Pandurang Rao and Venkataramana Rao, J.J.), (1) that the suit was maintainable and was not barred by S. 69 (2) of the Partnership Act; (2) that the object of S. 69 was to make sure that the general policy of the Legisla-

PASSING OFF. See also (1) TRADE MARK.

(2) TRADE NAME.

—Action for—Passing off of books—Cause of action. See TRADE NAME—PASSING OFF.

42 C.W.N. 541.

PATENT—Infringement—Suit for—Duty of defendant to give particulars as to whom he alleges to be true and first inventor.

In an action for infringement of a patent, the defendant, who denies the case of the plaintiff as to the true and first inventor of the patent, must give particulars as to whom he alleges to be the true and first inventor. (Blackwell, J.) GILLETTE INDUSTRIES, LTD v. YESHWANT BROTHERS. 177 I.C. 103—11 R.B. 63—40 Bom L.R. 478—A.I.R. 1938 Bom. 347.

PATENT.

Novelty and utility of—Evidence of—Considerations in determining

strongest kind that the prior knowledge did not in fact give an obvious clue to the solution and ought not to be considered as destroying "subject matter." Mere simplicity is not necessarily an objection, a mere

INDUSTRIES, LTD. v. YESHWANT BROTHERS.

177 I.C. 103 = 11 R.B. 63 =
40 Bom.L.R. 478 = A.I.R. 1938 Bom. 347.

PATENTS AND DESIGNS ACT (II OF 1911),
S. 53—Infringement of—What constitutes.

Designs Act must, in order to constitute offences under the Act, be committed in British India. (*Beaumont, C. J. and Wadia, J.*) CALICO PRINTERS ASSOCIATION v. MITSUBISHI SHOJI KAISHA, LTD.

177 I.C. 913 = 40 Bom.L.R. 681 =
A.I.R. 1938 Bom. 413.

PATNI SALE—Terms of patni tenure—Duty of purchaser to enquire.

It is the duty of the purchaser when he purchases the patni tenure at a sale to enquire as to the terms of the

If an offence punishable in British India

HAIIDER v. SYED ISSA. 175 I.C. 615 = 11 Cr.L.J. 651 =
11 R.N. 2 = A.I.R. 1938 Nag. 235.

S. 28—Deception—Meaning—Fostering counterfeit coins on another—Accused of 'counterfeiting' coins. The deception meant in S. 28 is with regard to the nature of the coins. It is deception through the resem-

PENAL CODE (1860), S. 34.

blance of the true coin with the false and it means that some one must be led to believe that the false coin is a rfeited some coins
ouse with the sole
the counterfeit
ccused cannot be
J.) SAHEBRAO
176 I.C. 985 =

S. 34—Applicability—'Common intention'—
What is—Common intention to cause grievous hurt but
murder committed by one—Offence committed by others.
S. 34, Penal Code, is not confined only to cases where

an offence under S. 325, I. P. Code. (*Zia-ul-Hasan and York, J.J.*) RAJA RAM v. EMPEROR,

1938 D.W.N. 1057 = 1938 O.A. 808 =
1938 A.W.R. (C.C.) 92 (2) = 1938 O.L.R. 469 =
1938 A.Or. 127 = 178 I.C. 162 =
A.I.R. 1938 Guah. 388

caused, (*Blacker, J.*) MAHOMED NAWAZ v. EMPEROR. I.L.R. (1938) Lah. 603 = 176 I.C. 878 =

11 R.L. 226 = 39 Cr.L.J. 781 = 40 P.L.R. 850 =
A.I.R. 1938 Lah. 543.

S. 34—Applicability sudden scuffle.

Where there was a sudden scuffle between the accused and the other party and there was no consultation or premeditation amongst the accused, S. 34, I. P. Code, is not applicable to the case. (*Pour, J.*) BAKKAT ALI v. STATE. 40 P.L.R. J. & K. 37.

Distinction
between S. 34
as a common
eral persons
results in a
tor becomes
hable as if that act were done by him alone S. 37

to commit that offence. (*Courtney Terrell, C.J. Dharle and Chatterjee, J.J.*) EMPEROR v. ITWA MUNDA.

175 I.C. 300 = 4 B.R.
39 Cr.L.J. 551 = 10 R.P.
1938 P.W.N. 491 = 19 Pat
A.I.R. 1938 Pa

PENAL CODE (1860), S. 34.

—Ss. 31, 302 and 323—Common intention—*Fight ensuing on mutual exchange of abuse—Intention to commit murder—It can be inferred.*

Where the common intention of the party of the accused appears to have been merely to abuse and possibly to use fists on the opposite party for an alleged insulting behaviour on their part, and there was mutual exchange of abuse before the fight ensued, a common intention to commit a murder cannot be inferred, even though death

be convicted for any offence other than one under S. 323, I. P. Code. (*Young C. J. and Ram Lal, J.*) **MIAN SINGH v. EMPEROR.** A.I.R. 1938 Lah. 747.

—S. 39—Applicability—Two men striking another with dangerous weapons and killing him—Offence.

Dhavit, J.—Where two or more persons unite together and strike a series of blows, with dangerous weapons on the body of the deceased and it is impossible to identify any one of the wounds with any one of the assailants, nevertheless if the deceased dies as a result of the injuries received, each of the assailants is guilty of the offence of murder. The fact that one assailant committed the offence by yielding to the threats of other is no mitigation of the circumstances, because

Dhavit and Chatterjee, J.J. **EMPEROR v. ITWA MUNDA.** 175 I.C. 300 = 4 B.R. 568 =

39 Cr.L.J. 554 = 10 B.P. 608 = 1938 P.W.N. 491 = 19 Pat.L.T. 476 = A.I.R. 1938 Pat. 268 (S.B.).

—S. 40—Offence—Meaning—Breach of rule framed under local law.

Where a local law declares a breach of the rules made under its authority to be punishable, then a breach of such rules might constitute an offence within the meaning of S. 40. (*Robert, C.J. and Spargo, J.*) **BUK SOO MEAH v. EMPEROR.** 178 I.C. 121 = 39 Cr.L.J. 985 = A.I.R. 1938 Rang. 350.

—S. 41—Special law—Criminal Law Amendment Act, S. 7—Abolition of offence under—Corruption for—Sustainability.

39 Cr.L.J. 985 = A.I.R. 1938 Rang. 350.

—S. 71—Conviction for offences under Ss. 323 and 452—Separate sentence—Legality.

Where a person is convicted for the offences under S. 323 and S. 452 committed on one and the same occasion he can be sentenced separately for each offence. (*Macarty, J.*) **TAN AUNG BA v. THE KING.** 174 I.C. 952 = 39 Cr.L.J. 487 = 10 B.R. 461 = A.I.R. 1938 Rang. 114.

PENAL CODE (1860), S. 99.

—S. 71—Different offences out of same act—Separate convictions and sentences—If justified. *See* WIRELESS TELEGRAPHY ACT, SS. 3 AND 6.

1938 M.W.N. 823 = (1938) 2 M.L.J. 281.

—S. 75—Previous convictions—Sentence—Considerations.

More severe sentences than might normally be given may be given if there are previous convictions. But sentences ought to be inflicted with some regard to the nature of the offence, and also they must be tempered with humanity. (*Young, C. J. and Abdul Rashid, J.*) **ALLAH DITTA v. EMPEROR.** 40 P.L.R. 118.

—S. 82—Applicability—Offences under special or local law.

S. 82, I. P. Code, is not confined to offences under the Code but extends also to offences under any special or local law, in the absence of special provisions to the contrary in such law. (*Saguley, J.*) **THE KING v. BA BA SEIN.** 1938 Rang L.R. 227 = 178 I.C. 508 = A.I.R. 1938 Rang. 400.

—S. 84—Applicability—Accused shown by evidence to have been well aware of his act—If entitled to exemption.

When the evidence in a case clearly shows that an accused person knew quite well what he was doing, S. 84, I. P. Code, cannot apply. Where the accused person charged with the offence of the murder of his

on the arms of his wife stabs her with the door not surrender until command and where the accused further produces the weapons with which he has committed the murder, the case cannot be brought under S. 84, I. P. Code. (*Atcock and Horwill, J.J.*) **SUBBAI GOUNDAN v. EMPEROR.** 1937 M.W.N. 1329.

—S. 86—Accused so intoxicated as to be unable to form intent to kill—Offence committed. *See* PENAL CODE, SS. 302, 304 AND 86.

A.I.R. 1938 Rang. 219.

—Ss. 299 and 300—Applicability—Accused getting drunk in the normal course of conduct—Intention to kill—If negatived—Knowledge of death being caused—Plea of drunkenness—If available as defence to charge of murder.

Drinking might negative intention in appropriate cases, but will not negative knowledge. S. 299, I. P. Code, requires knowledge that a person who is drunk and does it will claim the benefit of it to be so drunk. It is not enough to say that he was merely following the crowd. It is merely following the crowd, the element, that he was doing. Intention are to be ascertained from the facts and the same thing under Ss. 86 and 299. (*Horwill, J.J.*) **SUBBAI GOUNDAN v. EMPEROR.** 1937 M.W.N. 1329.

—S. 30—Private defence—Right—Conditions and limits to exercise of—Charge of rioting and unlawful assembly—Plea of private defence—Sustainability.

In considering whether the right of private defence exists and can be pleaded in defence to a charge of rioting and unlawful assembly the nature of the apprehended danger must be looked at and it has also to be seen whether there was time to have recourse to the police authorities, it has always to be borne in mind that whether both the parties are determined to fight

PENAL CODE (1860), S. 99.

and to go to the disputed land fully armed in full expectation of an armed conflict in order to have a trial of strength, the right of private defence disappears. Where the object of the accused is not to prevent an aggression but to try out their strength by means of a pitched battle, there can be no room for the plea of right of private defence. There can be no right of private defence where the right is premeditated on both sides unless the object of the assembly is shown to have been to repel forcible and criminal aggression. If a man prefers to use force in order to protect his property when he can, for the protection of such property, easily have recourse to the public authorities, his use of force is made punishable by the Penal Code no matter what the intention of that person may be. (*Mansoor Lal and Chatterji, J.J.*) SATNARAIN DAS v. EMPEROR.

17 Pat. 607-176 I.O. 740-A.I.R. 763-
11 B.P. 103-32 Cr.L.J. 785-1938 P.W.N. 593-
19 Pat.L.T. 501-A.I.R. 1938 Pat 518.

—S. 99—Resistance to public servant—Execution of warrant of arrest—Right of private defence—If exists—Cr. P. Code, S. 63.

Where on the mere mention and showing of a warrant for arrest, resistance was immediately offered and the police-officers after overcoming such resistance showed and communicated the contents of the warrant of arrest.

PENAL CODE (1860), S. 109.

—S. 100—Right of private defence—Deceased's party being aggressive.

Where the deceased persons and their companions come armed with barchis and dangs and drunk and feeling that they have a grievance against the accused, they attack them causing an injury with a sharp edged weapon to one of them, the accused can be said to have reasonable apprehension that grievous hurt with deadly weapons would be caused to them so as to give them the right of private defence. So also where it cannot be said that the reasonable apprehension of danger to the persons of the accused's party had ceased before injuries attributed to the accused were inflicted, it cannot be said that the right of private defence has been exceeded. (*Tek Chand and Ram Lal, J.J.*) EMPEROR v. UJAGAR SINGH. A.I.R. 1938 Lah. 791.

—S. 100—Right of private defence—Extent.

A woman was being brutally beaten by her husband. She rushed out of her room and asked her brother who was sleeping near by to protect her. She was followed by her husband who said that he was going to continue the beating. He was a very brutal and dangerous man. The brother of the woman thereupon seized a hatchet and killed him. There was evidence that if he had not done so the deceased might have killed him.

Held, that under these circumstances the brother acted in the sight of self defence not only of his sister

—Causing death of brother, if justified—If sudden provocation—If exists.

Where the accused and a major woman married lived together by mutual consent, and meeting them, the brother of the woman drove her away from the company of the accused and whereupon

death.

Held, further, that the accused was being forcibly deprived of the company of a woman of mature years, who

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A.I.R. 1938 Lah. 60.

—Proof required.
The offence of abet-
tigated the person
was an agreement
(*Derbyshire, C.J.*)
JANERJI v. EMPEROR.
III C.L.J. 41.

ROR.

—S. 108 A—'Offence'—Meaning of—Abetment of child marriage outside British India—If punishable.

PENAL CODE (1860), S. 109.

does not itself constitute abetment, unless the omission is an illegal omission, i.e., involves a breach of a duty imposed by law, and not merely a breach of a departmental rule of conduct or discipline. A mere omission on the part of a clerk in a public office to bring to the notice of the higher authorities offences committed by other clerks in the same office cannot amount to abetment of those offences. If he does nothing which facilitates the commission of the offences and if he is not

held to
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conduct. The question is one of fact. (*Panurang Row, J.*) ANANTHACHARI v. EMPEROR.

A.I.R. 191

—Ss. 109, 321
intent give a beating
of them—Others if

Where several persons
with the intention
with lathis, but it is proved that as a result of the blow
dealt by one of them the other died, though that person
is guilty of murder, the others are only guilty of abetting
an offence under S. 325, I. P. Code, for though the act
of murder was committed with their help, it could not be
said that it was the probable consequence of the abetment
on their part. (*Thomas, C.*)

J.) RAM DAMODAR v. EMPEROR

178 I.C. 348=

1938 A Cr O

19:

—Ss.

tion of spe:

Ss. 222 (1)

—Ss.

found in temple in middle of night with house-breaking
implements and deadly weapons—Offence—Inference.

Where it was proved that the accused, four in number,
and another person were found together in the precincts
of a temple in the middle of the night with house-breaking
implements and arvuais and a gun,

Held, (1) that it followed that the
conviction under S. 143, I. P. Code,

have been there with a common object
kind; (2) that it did not, however, b

support a conviction under S. 120-B. I

J.) PUBLIC PROSECUTOR v. PICHAI

177 I.C. 545=11 R.N. 344=39 Cr L.J. 302=

1938 M.W.N. 593=48 I.W. 146=

A.I.R.

—S. 120 B—Applicability—Con

cate false evidence.

As there is no express provision

for the punishment of conspiracy to fabricate false
evidence, S. 120 B applies to such offence. (*Gruber, J.*)

SAHEBRAO AWADHUT v. EMPEROR.

176 I.C. 985=11 R.N. 102=39 Cr L.J. 838=

A.I.R. 1938 Nag 444.

—S. 120-B—Charge of conspiracy to commit an
offence—Offence carried out—Trial on charge of conspiracy—Legality.

It is legal to try accused persons on a charge of
conspiracy to commit an offence even if the substantive
offence has been carried out. (*Pollock and Gruber, J.J.*)

SURAI PAL SINGH v. EMPEROR.

I.L.R. (1938) 516=178 I.C. 853=11 R.N. 81=

39 Cr L.J. 818=1938 N.L.J. 185=

A.I.R. 1938 Nag 328.

PENAL CODE (1860), S. 124-A.

—S. 120-B—Charge for conspiracy—Known overt
act amounting to an offence—Proper procedure.

Per *Biswas, J.*—Where proof of the conspiracy is
sought to be rested on proof of participation in an overt
act which itself amounts to an offence, the proper
course is to put the accused on trial for that offence. It
is not right in such a case to charge conspiracy on the
off chance of being able to secure a conviction for the
overt act. (*McNair and Biswas, J.J.*) GOLOKE BEHARY
TAKAL v. EMPEROR.

I.L.R. (1938) 1 Cal. 290=

173 I.C. 65=39 Cr L.J. 161=10 R.O. 441=

42 C.W.N. 129=66 C.L.J. 225=

A.I.R. 1938 Cal 51.

—Ss 120 B, 302 and 201—Charge under S. 120-B

read with Ss. 302 and 201—Simple conspiracy charged

mit both an offence under S. 302 and an offence under
S. 201, the prosecution must stand or fall according as
they can or cannot establish the conspiracy as charged.
A conspiracy to commit a particular offence or offences
having been charged, it would not be open to the prosecution
to prove a different conspiracy. Nor could the

for a conviction for
ed to constitute the
minor offence. To
hardly applies, for it
evidence falls far
the prosecution had

66 C.L.J. 225=A.I.R. 1938 Cal. 51.

—S. 120 B—Propriety of a charge under—
Numerous instances of misappropriation

Where the accused were in fact charged with specific
offences and over and above these, there was a charge of

—S 124 A—Article censuring policy of Ministry

seditions and does not fall within the mischief of
S. 124-A, I. P. Code. (*Bartley and Khundkar, J.J.*)
DHIRENDRA NATH SEN v. EMPEROR.

178 I.C. 636=42 C.W.N. 1150=

A.I.R. 1938 Cal 721.

—S. 124 A—Government established by law—
Ministry of a Province—Exciting disaffection towards
them—If offence—Government of India Act, Ss 49 and
50

Obiter.—The expression "Government established by
law in British India" in S. 124-A, I. P. Code, denotes
the person or persons authorised by law to administer
executive Government in any part of British India.
There is no specific provision in the Government of
India Act vesting the Ministry of a Province with

PENAL CODE (1860), S 124 A.

executive functions. On the other hand, such functions should under S. 49 of that Act "be exercised by the Governor either directly or through officers subordinate to him." It is difficult to maintain the position that a Ministry chosen by the people, and empowered to dictate the policy of the Government, is in any real sense a body of persons authorized to exercise the executive functions of the Government and that they would not be an offence under S. 124 A. Code. (*Burley and Khanikar, J.J.*)

NATH SEN v. EMPEROR. 178 I.O. 638-
C.W.N. 1150-A.I.R. 1938 Cal. 721.

S. 124-A—"Government"—Meaning of—Attack on magistracy and police.

"The Government" in S. 124 A, I. P. Code, means much more than the Ministers, and includes every body with which the Ministers have to deal in the attempt to bring into hatred and contempt the magistracy and police is an offence under S. 124 A. Code.

(*Burley and Khanikar, J.J.*) HATLIWALLA v. EMPEROR. 177 I.O. 747-
39 Cr. L.J. 938-(1938) M.W.N. 529-48 L.W. 170-
A.I.R. 1938 Mad. 758-(1938) 2 M.L.J. 416.

S. 124 A—Offence—Till—Political secret—If relevant—Dissatisfaction with Government—If offence.

The fact that the opinions expressed in a speech are in accordance with the principles of the political party in power at the time cannot take the case out of S. 124 A, I. P. Code. A Court clearly cannot take account of the principles of a political party and declare that an offence punishable under the Code is not an offence because it does not contravene the principles of that party. It is not the advocacy of crime which is an offence; it is the advocacy of crime which they may be—that the methods and moles of affection towards the Government is an offence under S. 124 A, I. P. Code.

heaters to join the Government of India. In itself sedition within the meaning of S. 124 A, I. P. Code. (*Blacker, J.*) PINDI DAS v. EMPEROR.

177 I.O. 707-48 L.W. 357-40 P.L.R. 872-
39 Cr. L.J. 930-A.I.R. 1938 Lah. 629.

S. 124 A—Scope—Offence—Criticism of Government—If punishable—Intention.

S. 124 A, I. P. Code, is intended as much to protect the people against agitators as it is to maintain the stability of the Government. Fair criticism of the Government is no offence; but the question the Court has to decide in a prosecution under the section is whether the speech of the accused on which the charge is based is intended to promote hostility

PENAL CODE (1860), S 147

life. (*Horrell, J.*) HATLIWALLA v. EMPEROR
177 I.O. 747-39 Cr. L.J. 938-1938 M.W.N. 529-
48 L.W. 170-A.I.R. 1938 Mad. 758-
(1938) 2 M.L.J. 416.

prosecution.

An assembly which is lawful may at any time become an unlawful assembly. But this has to be proved. Though common intention may be a matter which can only be inferred from circumstances, yet it is not enough

body to drive trespassing cattle to the pound—Armed with sticks in anticipation of interference.

Where the villagers went in a body to a place where the trespassing cattle were, in order to drive them to the pound, their common intention would not be an intention which would make their assembly unlawful within the meaning of Cl. (4) of S. 141, I. P. Code. Not would the assembly be unlawful merely because they took sticks and axes, anticipating interference. The assembly would be unlawful if there had been a common intention to remove the cattle by force from the possession of persons in charge of them. (*Winton, J.*) SANGA v. EMPEROR. 178 I.O. 638-
C.W.N. 1150-A.I.R. 1938 Cal. 721.

accused found guilty of offence under S. 147, I. P. Code. See PENAL CODE (1860), S. 147.

of an unlawful assembly and resisting the process of law are two separate offences, though they may be committed in the course of the same transaction. (*Mahomed Noor and Rouland, J.J.*) SHEO AHIR v. EMPEROR. 178 I.O. 487-5 B.R. 104-
1938 P.W.N. 813-19 Pat. L.T. 665-
A.I.R. 1938 Pat. 518.

Ss. 147 and 158—Charge under—Dispute as to possession of land—Question of title—If can be gone into.

In cases of rioting and unlawful assembly arising out of disputes as to possession of land, it is open to the Court to go into the question of title incidentally in order to believe the evidence of the parties was really or whether a party was making out a privilege to engage in a pitched battle. (*Manohar Lal and Chatterji, J.J.*) SATNARAIN

couraged which may lead to a conflict with the authorities, with the certainty that there will be grievous loss of

PENAL CODE (1860), S. 147.

v. EMPEROR. 17 Pat. 607=176 I.C. 740=
4 B.R. 763=11 E.P. 103=39 Cr.L.J. 785=
1938 P.W.N. 593=11 Pat L.T. 504=
A.I.R. 1938 Pat. 518.

—S. 147—*Conviction under—Sustainability—Charge against seven persons—Acquittal of four—Conviction of other three—Legality.*

In the absence of evidence to than five persons took part in th

J.) GOPALAKRISHNA v. EMPEROR

176 I.O. 40=11 B.M. 27=80 Cr.L.J. 687 (1)=
1938 M.W.N. 224 (1)=47 L.W. 323=
A.I.R. 1938 Mad. 392.

—Ss. 147 and 148—*Rioting—Three out of four found not guilty—Fourth, if can be held guilty.*

Where the evidence against all the four accused is precisely similar and three of them are found not guilty of the offence of rioting, the fourth cannot be found guilty of rioting with a deadly weapon. (Cunliffe and Henderson, JJ.) EMPEROR v. TUKKU.

67 C.L.J. 217.

affray—*Sustainability.*

One of the ingredients of the offence of affray is fighting by two or more persons. Fighting connotes

attempt to retaliate, the offence of affray cannot be said to be committed because there is no fight in such a case, though there may be assault. A conviction under S. 160, I.P. Code, in such a case is unsustainable. (Pandurang Row, J.) RAMI REDDI v. NARASI REDDI.

178 I.O. 523=1938 M.W.N. 975=

of release to the sureties, as it happened to be a holiday, and where a Sub-Inspector fails to comply with such order on the ground that the order should have been communicated to him only through Superintendent of police, he is guilty of offences under Ss 166 and 342, I.P. Code. The Cr. P. Code gives Magistrates the authority to order release on bail and the Sub-Inspector cannot refuse to carry it out. (Bennett, J.) MOHAMMAD YAKUB v. EMPEROR.

1938 A.L.J. 782=
177 I.O. 867=1938 A.C.O. 79=1938 A.L.R. 794=
11 B.A. 285=39 Cr.L.J. 974=

1938 A.W.R. (H.C.) 471=A.I.R. 1938 All. 534.

—S. 171-B—*Offence under—Candidate for election offering rival candidate money for withdrawal of his candidature.*

Where the accused, a candidate for an election, directs his agent to dissuade a rival candidate from standing for the election, by offering him money and the latter accordingly offers a large sum of money to the rival candidate provided he withdraws his candidature, the conduct of the accused comes within the definition of 'bribery' contained in S. 171 B. (Henderson, J.) AHMED KABIR CHOWDHURY v. EMPEROR.

PENAL CODE (1860), S. 187.

174 I.O. 808=39 Cr.L.J. 483=10 B.C. 725=
A.I.R. 1938 Cal. 274.

—S. 182—*Naraji petition against report of officer—Enquiry into—Duty of Magistrate before prosecuting petitioner.*

Where a naraji petition is submitted to a Magistrate

: PALIT.

67 C.L.J. 583.

S. 184, Penal Code, deals only with the obstruction of a proceeding conducted by lawful authority and a proceeding can be obstructed by measures other than physical methods. Where as the result of the abusive language used by the accused against the bidders and the officer conducting the sale, further bids were not forthcoming and the sale had to be postponed, the sale of the property is obstructed and the accused are guilty under S. 184, Penal Code. The obstruction to be an offence under this section, need not be physical (Grille

—Ss. 184 and 186—*Distinction between—Difference in nature of obstruction.*

A.I.R. 1938 Nag. 529.

—S. 186—*Obstruction—Threats, when can amount to.*

The word 'obstruction' in S. 186 of the Penal Code is not confined to physical obstruction only. Threats of violence made in such a way as to prevent the public servant from carrying out his duty might easily amount to an obstruction of the public servant. (Bennett, J.) EMPEROR v. NANNHUA.

173 I.C. 732=
39 Cr.L.J. 363 (1)=10 B.A. 507=1938 A.C.O. 3=

1938 A.L.R. 173=1937 A.W.R. 1179=

1937 A.L.J. 1344=A.I.R. 1938 All. 118.

—S. 186—*Offence—Officer entrusted with warrant of attachment by Panchayat Board—Obstruction to—Offence—Existence of legal warrant—If condition precedent—See PENAL CODE, S. 353*

1938 M.W.N. 418.

—S. 187—*Offence—Person attending and witnessing search without written order—Refusal to sign search list—If offence—Cr. P. Code, Ss. 103 (1) and (5)—Signing of search list—If part of duty to attend or witness search*

Refusal to attend and witness a search when called upon to do so by an order in writing is an offence under S. 187, I.P. Code, as laid down in S. 103 (5), Cr. P. Code, as amended in 1923. But a refusal to sign the search-list by a witness to search who attends the search, though he has received no order in writing, cannot by itself be deemed to be an offence under S. 187, I.P. Code.

Per Varma and Manohar Lal, JJ.—Penal laws must be strictly construed. The Legislature has deliberately omitted to make penal the refusal to sign the search-list, and there is nothing in S. 103, Cr. P. Code,

PENAL CODE (1860), S. 188.

to compel the person witnessing the search to sign the search list also. Refusing to sign the search list is not refusing to assist the public servant in the discharge of his public duties as contemplated by S. 187, I. P. Code.

Per Chatterji, J.—Persons who have become bound by an order in writing signed by the officer concerned under the last part of S. 103 (1), Cr. P. Code, to become search witnesses, are also under the obligation to sign the search list that may be prepared, and if they fail to do so, they are guilty of refusing to render

PENAL CODE (1860), S. 211.

amounts to an offence under S. 204. (*Davis, J. C. and Mehta, J.*) **TAKHTRAM TULSIDAS v. EMPEROR**
178 I.C. 361—A.I.R. 1938 Sind 217.

—S. 206—*Applicability*—Judgment debtor harvesting attached crops—Absence of fraudulent intent—Judgment debtor not aware of attachment and harvesting to save crops from destruction—Offence.

A judgment-debtor who merely harvests his crops which happen to have been attached cannot be held to be guilty under S. 206, I. P. Code, unless it is shown that he does so with the fraudulent intention of

sary. For the purpose of proving an offence under S. 193 of the Penal Code, it is sufficient, if false evidence was intentionally given by a person knowing the statements to be false and with the intent of obtaining an advantage or causing injury to another person, that the statement is not true. It is not necessary in such a case that the statement should always be concerning a question of fact. A decision of the case before the Court in which the false evidence is given. (*Guha and Lathibridgi, J.*) **JUGAL CHANDRA DALAL v. EMPEROR.** 42 C.W.N. 31.

—S. 183—*Onus of proof.*

The second part of S. 211 must be read with the first part. The first part of S. 211 refers to a person who is a criminal and who is found guilty of an offence under S. 154, Cr. P. Code, as when a complaint is made direct to a Magistrate under S. 200. (*Davis, J. C. and Mehta, J.*) **DHARANDAS HIRANAND v. EMPEROR.** 178 I.C. 218—A.I.R. 1938 Sind 213.

PENAL CODE (1860), S. 212.

sentence. (*Baguley, J.*) THE KING v. MA BAN GYL,
1938 Rang. L.R. 236 = A.I.R. 1938 Rang. 397.
—S. 212—*Applicability—Domes found to be con-*

there, and he gave no answer. The defence was that it was the petitioner himself that had arrested the three Domes. It was also in evidence that a dacoity had been committed in the neighbourhood, and that in connection with this dacoity not only were processes under Ss. 87 and 88, Cr. P. Code, taken out and served against the three Domes, but proclamations by beat of drum were made. But the proclamations neither named these particular Domes as the offenders nor specified the particular dacoity of which evidence had been given in the case as

it was he himself that had arrested the Domes, was insufficient to warrant his conviction on the footing that he had concealed persons whom he knew or had reason to believe to be "the offenders" in relation to the particular dacoity in question. (*Davle, J.*) SHIVAREKHA PANDE v. EMPEROR, 178.

1938 P.W.N. 468 = 19 P.

4 B.R.

—S. 215—*Applicability*

PENAL CODE (1860), S. 225 B.

To 'deprive' a person of any article, may be either to take it away from him or to prevent him from getting possession of it, if he would have done so in the normal

1938 A.L.R. 675 = 11 Cr. L.J. 808 =
1938 A Cr C. 43 = 1938 A.L.J. 531 =
1938 A.W.R. (H.C.) 362 = 11 R.A. 145 =
A.I.R. 1938 All. 440.

—S. 216—*Offence under—Proof required.*

The mere fact that an absconder is found in the house of another person is not sufficient to involve the owner of the house in an offence under S. 216, I. P. Code, unless all other elements of the offence are established. Among other things, it is the duty of the prove the knowledge of the accused person as bat section, and here too the fact that a had been made some time before the conclusive evidence of the knowledge of the ender. (*Din Mohammad, J.*) MOOLA v.

40 P.L.R. 934.

EMPEROR.

—Ss. 218 and 219—*Applicability—Charge against Village Munsif of making false entry in suit register—Entry as to fictitious suit and fictitious judgment thereon—Offence.*

dent to be established by prosecution—burden of proof of attempt at apprehension of offender.

The words "unless the accused uses all power to cause the offender to be apprehended of the offence," in S. 215, I. P. Code, interpreted as making failure to use means apprehension of the offender as one of the of the offence which it is necessary for th to establish in order to obtain a conviction. clause is in the nature of an exception. elements of the offence under S. 215 have been established by evidence, the onus of proving that the accused

of suits filed in his Court, framed that register in a manner which he knew to be incorrect, namely, by

39 Cr. L.J. 875 = 11 R.M. 327 = 1938 M.W.N. 315 =
A.I.R. 1938 Mad. 595 = (1938) 1 M.L.J. 876

arrest
y Judge
aten by
time of
Varrant

—If legal—Escape by arrested person from custody—

177 I.C. 344 = 19 Pat. L.T. 776 = 4 B.R. 818 =
39 Cr. L.J. 887 =

—S. 215—*Dei*
to who the offender
endeavour—Onus.

over of the
of arrest
The order
for arrest was passed by the Munsif and the warrant

PENAL CODE (1860), S. 228.

was signed by the head clerk in pursuance of a general order passed by the predecessor in-office of the Munsif who ordered the arrest. The respondent signed the warrant of arrest but did not go with the process server and then absconded.

Held, that the accused was guilty of an offence under S. 225 B, and the fact that the warrant was signed by the head clerk or that there was no order by the succeeding Munsif authorizing the head clerk to sign arrest warrants did not make the warrant illegal. The order of delegation was made by the Court and was in force and withdrawn. (*Burn, J.*) PUBLIC PROSECUTOR v. ABDUL RAJAK. 176 I.C. 138—11 R.M. 31—53 C.L.J. 685—1938 M.W.N. 316—47 L.W. 536—A.I.R. 1938 Mad. 536—(1938) 1 M.L.J. 667.

—S. 228—Debt Conciliation Board—Power to punish for contempt. See CR. P. CODE, S. 460. 40 P.L.R. 218

—S. 235—Offence under—Facts to be proved to sustain the charge.

An offence under s. 235 of the Penal Code is made out unless the prosecution proves possession of the instrument or material such a possession was with the intention same for the purpose of counterfeiting or knowledge and belief that it was intended for the purpose. If the prosecution fails to prove the necessary *mens rea*, a person cannot be convicted under the section by a mere proof of physical possession of an instrument or material. (*Venkataramana Rao, J.*) MORSAN v. EMPEROR. 173 I.C. 391—10 R.M. 578—39 Cr.L.J. 311—1938 M.W.N. 89—47 L.W. 173—A.I.R. 1938 Mad. 393—(1938) 1 M.L.J. 482.

—Ss. 278 and 114—Abetment of offence—Proof required.

To establish the abetment of an offence under S. 279, it is not sufficient to show that the accused have instigated the driver to drive in a manner which is dangerous. The mere fact that the owner or an occupant did not insist on the driver driving at a moderate pace, does not show that he instigated his driving at a reckless pace (*Mackney, J.*) MAUNG TUN KHIN v. THE KING. 175 I.C. 133—10 R.M. 482—39 Cr.L.J. 535—A.I.R. 1938 Rang. 97.

—S. 279—Negligence—Collision in road crossing

the car not knowing that a vehicle was approaching, nevertheless approached the crossing at a reasonable speed, the accident was held to be solely due to the Ekka driver neglecting the elementary precautions. (*Banna, J.*) W. K. WESLEY v. EMPEROR. 178 I.C. 183—1938 A.C. 90—1938 A.L.R. 827—1938 A.W.E. (H.C.) 605—A.I.R. 1938 All. 571.

—S. 279—Offence under, and offence under S. 5 of Motor Vehicles Act—Distinction between See MOTOR VEHICLES ACT, S. 5. A.I.R. 1938 Rang. 161.

—S. 279—Rash and negligent driving—Meaning of.

Under S. 279 the rashness or negligence shown must be what may fairly be described as criminal rashness or criminal negligence. There must be something more than mere error of judgment or mere carelessness. A tram-

PENAL CODE (1860), S. 299.

driver when running his car on the lines is entitled to expect that if other vehicles are on the lines, they will give passage to him, and will not obstruct his ordinary progress. Where therefore a tram driver is driving his car at a fast but not at excessive speed and a camel cart or a bullock cart running parallel to it in the same direction suddenly swerves to the wrong side and collides with the tram car, the tram-driver cannot be said to be rash or negligent within the meaning of S. 279 merely because he does not anticipate that the other vehicle would suddenly swerve to the wrong side instead of to the right side. (*Davis, J. C. and Hazeldine, J.*) ABDUL GHANI v. EMPEROR. 175 I.C. 27—10 R.M. 272—39 Cr.L.J. 515—A.I.R. 1938 Sind. 86.

—S. 291-A—Chit fund amounting to lottery—Person conducting—Liability to conviction—Government requiring conductor to wind up and repay subscribers within certain time—If can be pleaded in defence as

that date and cannot be pleaded in defence to a charge under the section. (*Herwill, J.*) PUBLIC PROSECUTOR v. SOOSAI PILLAI. 177 I.C. 840—11 R.M. 383—39 Cr.L.J. 916—1938 M.W.N. 431—47 L.W. 573—A.I.R. 1938 Mad. 715—(1938) 1 M.L.J. 724.

—Ss. 299 and 300—Construction and scope—Murder and culpable homicide—Distinction—Test to decide—Intention of accused—Material time to ascertain—Accused cutting off, and defenceless woman on head savagely and killing her—Offence—Penal Code,

must turn to the words of the law themselves. If the killing comes within any of the four clauses of s. 300, I.P. Code, the offence is, exceptions apart, murder. The third clause to S. 300 refers to a bodily injury sufficient in the ordinary course of nature to cause death, and S. 299, I.P. Code, refers to bodily injury likely to cause death. It is on account of the use of the word "sufficient" in S. 300, thirdly and "likely" in S. 299 that much of the difficulty in the interpretation of these sections fully S. 300, binary grammar. If on re-killing does than he can

refer to S. 299. If the killing comes within the second part of S. 299, namely, that relating to the intention of causing a bodily injury likely to cause death, then it comes under S. 304, Part I, and if there is no intention, but only knowledge, that is to say, if there is no intention to cause death or a bodily injury likely to cause death, but only knowledge that death is likely to be caused, the offence falls under S. 304, Part II. A reference to S. 304, I.P. Code, will show that in Part I, there is intention, while in Part II, intention is expressly excluded, and the latter part of S. 304 deals with only knowledge. Cases under the Exceptions to S. 300, I.P. Code, fall under S. 304, Part I. The words of S. 300 are plain and it is the duty of judges to read them carefully and intelligently. Where the accused had a defenceless old woman savagely on the head with

PENAL CODE (1860), S. 299.

and kill her, the offence is murder and the conviction should be under S. 302, I.P. Code, and not S. 304, for culpable homicide. The intention to be looked at is the intention at the time that the accused strikes the victim, and not at the time when he leaves his house for the purpose he has on hand. The latter is not the material time. A man's intentions are to be judged by his acts in relation to the surrounding circumstances.

Lobo, J.—The test to be applied in any particular case of culpable homicide, apart from the exceptions to S. 300, I.P. Code, is whether the intention specified in Cl. 1 or 3 of S. 300, I.P.

evidence and circumstances, murder; if it is not, the offence is culpable homicide.

(*Davitt, J.C. and Lobo, J.*) *Haji Khudu v. Emperor* 32 S.L.R. 18.

—S. 299—Intention—Knowledge—Murder—Drunkenness—When available as defence—Person generally in the habit of drinking—Killing by—Offence. See PENAL CODE, Ss. 86 AND 299.

1937 M.W.N. 1329

—Ss. 299 and 300—Offence of murder—Intention to kill—If necessary.

It is not only an intention to kill the offence of murder or of culpable homicide does an act with the knowledge that his cause death or such bodily injury as death, he can be guilty of culpable homicide murder in that case also. (*Zia ul-Hasan, J.*) *Mildar Khan v. Emperor* 173 I.C. 339 = 1938 O.A. 154 = 1938 A Cr C. 11 = 1938 O.L.R. 108 = 1931 O.W.N. 184 = 10 R.O. 220 = 39 Cr L.J. 330 = A.I.R. 1938 Oudh 88.

—Ss. 300, 302 and 326—Applicability—Stabbing on the left forearm—Radial artery pierced and death caused by haemorrhage—Offence.

forearm. The radial artery was pierced and the deceased died of haemorrhage soon after.

Held, that accused was not guilty of murder or of culpable homicide not amounting only guilty of voluntarily causing S. 326, I.P. Code, as the hurt w accused must have known that by was likely to cause grievous hurt. (*Lakshmana Rao, J.*) *Kottengodan Alavi v. Emperor* 1938 M.W.N. 1274.

—S. 300—Murder—Injuries inflicted very serious and several in number.

Where the injuries inflicted by the accused on the deceased were of a very serious nature and several in number, one wound cutting the neck and severing the fourth cervical vertebra, another wound cutting the skull and exposing part of the surface of the brain, etc.

Held, that the accused had intended to kill the deceased and that they were guilty of murder. (*Roberts, C. J. and Spargo, J.*) *Tun Khine v. Emperor* 178 I.C. 298 = A.I.R. 1938 Rang. 331.

—S. 300, Secondly and Fourthly—Murder—Blow on head with heavy pestle—Offence.

A person who strikes a heavy blow on the head of another with a heavy pestle must be deemed to intend to cause such bodily injury as is likely to cause death. Though the accused may have no premeditation, the act of striking a man on the head with such a heavy

PENAL CODE (1860), S. 300.

weapon as a pestle is one which is so imminently dangerous that in all probability it must cause death. The accused in such a case is guilty of murder. (*Burn and Lakshmana Rao, J.J.*) *Chinna Pitchai Vadu v. Emperor* 177 I.C. 944 = 39 Cr L.J. 979 = 48 L.W. 415 = 1938 M.W.N. 871 (1).

—S. 300 (2)—Scope.

Where it has not been shown that any constitutional or other peculiarity existed in the case of the deceased which would have made it likely that injuries which ordinarily would not cause death, would be fatal in his case, the injuries are deemed to be sufficient to cause death.

(*Tek Chand and Ram Lal, J.J.*) *Warayam Sher Mohammad v. Emperor* A.I.R. 1938 Lah. 834.

—S. 300, thirdly, and Excep. 4—Applicability—Blow on head causing fissured fracture of skull—Death ensuing—Clot of blood found on brain underneath skull—No fight—Offence.

The accused struck the deceased on the head with a bamboo stick about 5 feet long and about 1½ inches in diameter. The blow caused a fissured fracture of the skull, and the medical examination revealed that a clot of blood was found present on the brain underneath the skull.

Held, that it must be inferred that the accused intended to cause such bodily injury as is sufficient in the ordinary course of nature to cause death, and the case fell under S. 300, thirdly, and the accused was liable to death.

Held, that it must be inferred that the accused intended to cause such bodily injury as is sufficient in the ordinary course of nature to cause death, and the case fell under S. 300, thirdly, and the accused was liable to death.

—S. 300 (3)—Scope—Number of serious injuries—Cumulative effect being death.

less than 20 injuries. The injuries on the legs and arms had been fractured and the jaw had been dislocated, the upper jaw was missing. There were also two contused wounds deep on the head, and contusions on other parts of the body. It may be that none of these injuries individually was sufficient to cause death, but death was due to the cumulative effect of the multiple injuries. On these facts,

Held, that the accused assaulted the victim with the intention of causing such bodily injuries as were sufficient, in the ordinary course of nature, to cause death. Their case, therefore, clearly fell within clause thirdly of S. 300. (*Tek Chand and Ram Lal, J.J.*) *Warayam Sher Mohammad v. Emperor* A.I.R. 1938 Lah. 834.

—Ss. 300, Excep. 1 and 304—Brother dragging away sister from company of accused—Accused killing brother—Offence. See PENAL CODE, Ss. 100 AND 300, EXC. 1. 173 I.C. 698.

—Ss. 300, Excep. 1 and 302—Conditions necessary for application of Exception—Interval of time between provocation and the killing—Effect.

PENAL CODE (1860), S. 300.

For the Excep. 1 to S. 300, I. P. Code, to apply, the accused must be deprived of the power of self control

I.L.R. (1938) All. 769 = 1938 A.W.R. (H.C.) 473 = 1938 A Cr C. 62 = 177 I.C. 821 = 1938 A.L.R. 790 = 11 B.A. 227 = 32 Cr.L.J. 956 (2) = 1938 A.L.J. 689 = A.L.R. 1938 A. 532

—S. 300, Excep. (1)—*Grave and sudden provocation—Provocation given to accused by a foster of which he had knowledge for two days—If amounts to.*

Where the accused stabbed the deceased owing to provocation caused by a certain poster of which he had knowledge for at least two days, the provocation cannot be said to be sudden, and the accused is guilty of murder under S. 302, I. P. Code (*Yeung, C. J. and Abdul Rashid, J.*) **AZIZ AHMAD v. EMPEROR**

176 I.C. 89 = 39 Cr.L.J. 695 = 11 B.L. 161 = 40 P.L.R. 119 = A.L.R. 1938 Lah 355

—Ss. 300, Excep. 2 and 302—*Private defence—Accused striking quarrel—Plea, if available.*

Where an accused began quarrel by acting in an improper manner towards the deceased's wife, and when he was asked by the deceased and the deceased's wife to leave the scene peacefully he declined to do so, whereupon a fight ensued in which the accused killed the deceased

Held, he could never plead the right of private defence. (*Roberts, C. J. and Dunkley, J.*) **THE KING v. NGA PU GYL**

178 I.C. 413 = A.L.R. 1938 Rang. 441.

—S. 300, Excep. 4—*Applicability—Accused using weapon against unarmed person in sudden fight.*

The using of a weapon by one person against an unarmed person in a sudden fight is not within the limits of Excep. 4 to S. 300 because it is expressly provided that no unfair or undue advantage must be taken by one of the combatants if the plea of sudden fight is to be raised by way of exception. (*Roberts, C. J. and Sharpe, J.*) **SYED AHMED v. EMPEROR**

173 I.C. 299 = 10 B.R. 335 = 39 Cr.L.J. 300 = A.L.R. 1938 Rang. 15

—S. 300, Excep. 4—*Applicability—Fight ensuing upon a sudden quarrel—Stabbing in the heat of passion—Proper sentence*

Where it is clear that the accused stabbed the deceased in the heat of passion in a fight

one of transportation for life. (*Murn and Mockett, J.J.*) **RAHIMAN KHAN SAHIB v. EMPEROR**

1938 M.W.N. 31 = 47 L.W. 149 = A.L.R. 1938 Mad. 403.

—Ss. 302 and 304—*Accused striking deceased one blow with stick on his head under provocation—Offence committed.*

V. D. 1938—70

PENAL CODE (1860), S. 302.

Where the accused struck only one blow with a stick on the head of the deceased in a sudden passion

A.L.R. 1938 Sind 63.
—S. 309—*Applicability—Stabbing a man with knife on forearm—Death caused by haemorrhage—Offence. See PENAL CODE, SS. 300, 302 AND 326.*

1938 M.W.N. 1274
—S. 302—*Concerted attack—Doubt as to who caused death—Sentence.*

When once the guilt of murder is proved the proper penalty to be passed is a matter for the discretion of the Judge and it is by no means true to say that merely because there is a doubt as to which of the several of the attackers inflicted the fatal blow this is sufficient ground for withholding the death sentence in the case of any or all of them. But a person who has even wrongly got the benefit of a lenient sentence at his trial, may sometimes be allowed to benefit by his good fortune, provided the sentence passed is one which is legal. (*Roberts, C. J. and Spargo, J.*) **TUN KHINE U v. EMPEROR**

178 I.C. 298 = A.L.R. 1938 Rang. 331

—S. 302—*Evidence—Benefit of doubt*
Where the prosecution evidence is of a partisan character and there is a doubt regarding the very presence of some of the prosecution witnesses at the spot and further though they say that cutting and penetrating weapons were carried by the accused, no such injury is found on the complainants, there is sufficient amount of doubt in the case and the accused must be given the benefit of that doubt. (*Tek Chand and Ram Lal, J.J.*) **AHMAD v. EMPEROR**

40 P.L.R. 697 = A.L.R. 1938 Lah 787.

—S. 302—*Evidence—Death capable of explanation on hypothesis of murder as well as of accident—Abscending of accused—Benefit of doubt*

If death can be explained on the hypothesis either of murder or of an accident, the accused is entitled to the benefit of the hypothesis which is consistent with his innocence. The fact that the accused was absconding can be explained by fear of consequences either of a murder or of an accident (*Yeung, C. J. and Ram Lal, J.*) **GORAKH v. EMPEROR**

40 P.L.R. 542
—S. 302—*Murder or culpable homicide—Lathi blow on the head—Death resulting.*

A lathi is a lethal weapon and any one who uses it on the head of another with such force as to fracture the

A.L.R. 1938 Oudh 256
—S. 302—*Offence under—Accused eighteen years old, but excited and somewhat drunk striking heavily on head of man lying prostrate—Proper sentence.*

The accused who was eighteen years of age and who on his wedding day was a bit excited and some drunk struck a heavy blow with a stick on the top

PENAL CODE (1860), S. 299.

and kill her, the offence is murder and the conviction should be under S. 302, I.P. Code, and not S. 304, culpable homicide. The intention to be looked at is intention at the time that the accused strikes the victim and not at the time when he leaves his house for the purpose he has on hand. The latter is not the material time. A man's intentions are to be in relation to the surrounding circumstances.

Lobo, J.—The test to be applied in a case of culpable homicide, apart from S. 300, I.P. Code, is whether the Cl. 1 or 3 of S. 300, evidence and circumstances murder; if it is not, the (*Davis, J.C. and Lobo, .*

—S. 299—Intention—Knowledge—Murder—Drunkenness—When available, as defence—Person generally in the habit of drinking—Killing by—Offence. See PENAL CODE, Ss. 86 AND 299.

1937 M.W.N. 1329.

—Ss. 299 . . .
to kill—If necessary

It is not only offence of murder does an act with cause death or death, he can be murder in that

KHAN v. EMPEROR

1938 O.A. 154—1938 A Cr C. 11—
1938 O.L.B. 108—1931 O.W.N. 184—
10 R.O. 220—39 Cr I . . .
A.I.B. 1938 . . .

—Ss. 300, 302 and 326—Applicability—on the left forearm—Radial artery pierced caused by haemorrhage—Offence.

The forearm of a man is not a vital part, and a person stabbing another on the fore arm cannot be held to the guilty of murder or culpable homicide not amounting to murder, though death is caused. In the course of an altercation between the accused and the deceased, the accused stabbed the deceased with a knife on the left forearm. The radial artery was pierced and the deceased died of haemorrhage soon after.

Held, that accused was not guilty of murder or even culpable homicide not amounting only guilty of voluntarily causing S. 326, I.P. Code, as the heart was accused must have known that by was likely to cause grievous hurt.

KOTTENGODAN ALAVI v. EMPEROR.

1938 M.W.N. 1274.

—S. 300—Murder—Injuries inflicted very serious and several in number.

Where the injuries inflicted by the accused on the

PENAL CODE (1860), S. 300.

weapon as a pestle is one which is so imminent.

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—S. 300, thirdly, and Excep. 4—Applicability—Blow on head causing fissured fracture of—Death ensuing—Clot of blood found on brain underneath skull—No fight—Offence.

The accused struck the deceased on the head with a

skull, and the medical examination revealed that a clot of blood was found present on the brain underneath the

fell under S. 300, thirdly, and the accused was liable to conviction under S. 302, I.P. Code.

Held, further, that the act of the accused did not fall under Excep. 4 of S. 300, which covered only acts done in a sudden fight, there having been no fight in the present case. (*Burn and Lakshmana Rao, J.*) CHINA NAGADU v. EMPEROR. 1937 M.W.N. 1129.

—S. 300 (3)—Scope—Number of serious injuries—Cumulative effect being death.

ed no less than 28 injuries.
wounds on the legs and
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bone had been dislocated,
in the upper jaw was missing.
There were also two contused wounds skin deep on the head, and contusions on other parts of the body. It may be that none of these injuries individually was sufficient to cause death, but death was due to the cumulative effect of the multiple injuries. On these

S. 300, (1) and (2) and (3) and (4) and (5) and (6) and (7) and (8) and (9) and (10) and (11) and (12) and (13) and (14) and (15) and (16) and (17) and (18) and (19) and (20) and (21) and (22) and (23) and (24) and (25) and (26) and (27) and (28) and (29) and (30) and (31) and (32) and (33) and (34) and (35) and (36) and (37) and (38) and (39) and (40) and (41) and (42) and (43) and (44) and (45) and (46) and (47) and (48) and (49) and (50) and (51) and (52) and (53) and (54) and (55) and (56) and (57) and (58) and (59) and (60) and (61) and (62) and (63) and (64) and (65) and (66) and (67) and (68) and (69) and (70) and (71) and (72) and (73) and (74) and (75) and (76) and (77) and (78) and (79) and (80) and (81) and (82) and (83) and (84) and (85) and (86) and (87) and (88) and (89) and (90) and (91) and (92) and (93) and (94) and (95) and (96) and (97) and (98) and (99) and (100) and (101) and (102) and (103) and (104) and (105) and (106) and (107) and (108) and (109) and (110) and 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PENAL CODE (1860), S. 300.

For the Excep. 1 to S. 300, I. P. Code, to apply, the accused must be deprived of the power of self control by provocation which is not only grave but also sudden. Where the accused after seeing the deceased committing adultery with his wife, waited for the deceased to return and then permitted him to go to sleep and there after spring on the deceased and killed him, the circumstances were held to be such that the provocation was both grave and sudden within the meaning of Excep. 1 to S. 300, I. P. Code, and that the accused was not guilty of an offence under S. 302, I. P. Code, but could only be convicted under S. 304. (*Bennet and Parda, J.J.*) **BALKU v. EMPEROR**

ILLR (1938) All 753—1938 A.W.R. (H.O.) 473—1938 A Cr C 62—177 I.C. 821—1938 A.L.R. 790—11 B.A. 227—39 Cr.L.J. 956 (2)—1938 A.L.J. 689—A.I.R. 1938 A 532.

—S. 300, Excep. (1)—*Grave and sudden provocation—Provocation given to accused by a letter of which he had knowledge for two days—If amounts to.*

Where the accused stabbed the deceased owing to provocation caused by a certain poster of which he had knowledge for at least two days, the provocation cannot be said to be sudden, and the accused is guilty of murder under S. 302, I. P. Code (*Young, C.J. and Abdul Rashid, J.*) **AZIZ AHMAD v. EMPEROR.**

176 I.C. 69—39 Cr.L.J. 605—11 R.L. 161—40 P.L.R. 119—A.L.R. 1938 Lah 355

—Ss. 300 Excep. 2 and 302—*Private defence—Accused striking quarrel—Plea, if available.*

Where an accused began quarrel by acting in an improper manner towards the deceased's wife, and when he was asked by the deceased and the deceased's wife to leave the scene peacefully he declined to do so, whereupon a fight ensued in which the accused killed the deceased.

Held, he could never plead the right of private defence. (*Roberts, C.J. and Dunkley, J.*) **THE KING v. NGA PU GYL.**

178 I.C. 413—A.I.R. 1938 Rang. 441.

—S. 300, Excep. 4—*Applicability—Accused using weapon against unarmed person in sudden fight.*

The using of a weapon by one person against an unarmed person in a sudden fight is not within the limits of Excep. 4 to S. 300, because it is expressly provided that no unfair or undue advantage must be taken by one of the combatants if the plea of sudden fight is to be raised by way of exception. (*Roberts, C.J. and Sharpe, J.*) **SYED AHMED v. EMPEROR.**

173 I.C. 299—10 R.E. 335—39 Cr.L.J. 300—A.I.R. 1938 Rang. 15

—S. 300, Excep. 4—*Applicability—Fight ensuing upon a sudden quarrel—Stabbing in the heat of passion*

PENAL CODE (1860), S. 302.

Where the accused struck only one blow with a stick on the head of the deceased in a sudden passion provoked by the deceased who was drunk and was abusing the accused's sister and mother in filthy language, he cannot be convicted of murder in the absence of proof of the intention and knowledge described in S. 300, I. P. Code. He can properly be convicted under S. 325 or S. 304, Part II, I. P. Code. (*Coldstream and Jas Lal, J.J.*) **JOGINDAR v. EMPEROR.** 40 P.L.R. 169.

—Ss. 302 and 304—*Applicability—Charge under S. 302—Prosecution not proving intention but proving knowledge required by S. 304, Part 2—Proper cause*

See CRIMINAL TRIAL—BENEFIT OF DOUBT.

A.I.R. 1938 Sind 63.

—S. 302—*Applicability—Stabbing a man with knife on forearm—Death caused by haemorrhage—Offence.* *See PENAL CODE, Ss. 300, 302 AND 326.*

1938 M.W.N. 1274.

—S. 302—*Concerted attack—Doubt as to who caused death—Sentence.*

When once the guilt of murder is proved the proper penalty to be passed is a matter for the discretion of the Judge and it is by no means true to say that merely because there is a doubt as to which of the several of the attackers inflicted the fatal blow this is sufficient ground for withholding the death sentence in the case of any or all of them. But a person who has even wrongly got the benefit of a lenient sentence at his trial, may sometimes be allowed to benefit by his good fortune, provided the sentence passed is one which is legal. (*Roberts, C.J. and Spargo, J.*) **TUN KHINE U v. EMPEROR.**

178 I.C. 298—A.I.R. 1938 Rang. 331

—S. 302—*Evidence—Benefit of doubt.*

Where the prosecution evidence is of a partisan character and there is a doubt regarding the very presence of some of the prosecution witnesses at the spot and further though they say that cutting and penetrating weapons were carried by the accused, no such injury is found on the complainants, there is sufficient amount of doubt in the case and the accused must be given the benefit of that doubt. (*Tek Chand and Ram Lal, J.J.*) **AHMAD v. EMPEROR.**

40 P.L.R. 687—A.I.R. 1938 Lah 787.

—S. 302—*Evidence—Death capable of explanation on hypothesis of murder as well as of accident—Absconding of accused—Benefit of doubt*

If death can be explained on the hypothesis either of murder or of an accident, the accused is entitled to the benefit of the hypothesis which is consistent with his innocence. The fact that the accused was absconding can be explained by fear of consequences either of a murder or of an accident. (*Young, C.J. and Ram Lal, J.*) **GORAKH v. EMPEROR.**

40 P.L.R. 542.

—S. 302—*Murder or culpable homicide—Lathi blow on the head—Death resultant*

—S. 302—*Offence under—Accused eighteen years old, but excited and somewhat drunk striking heavily on head of man lying prostrate—Proper sentence.*

The accused who was eighteen years of age and who on his wedding day was a bit excited and somewhat drunk struck a heavy blow with a stick on the top of the

1938 M.W.N. 31—47 L.W. 149—A.I.R. 1938 Mad. 403.

—Ss. 302 and 304—*Accused striking deceased one blow with stick on his head under provocation—Offence committed.*

PENAL CODE (1860), S. 302.

head of a man who was already lying prostrate because of an attack on that person by another man and the person died.

Held, that, although the case came near the border line between culpable homicide and murder, yet it fell on the side of murder.

Held further that under the circumstances a sentence of transportation should be passed with recommendation for commutation sentence to detention for four years in Borstal School which would be sufficient. (*Roberts, C. J. and Spargo, J.*) NGA PAW v. THE KING.

174 I.C. 442 = 39 Cr.L.J. 403 = 10 E.R. 401 = A.I.R. 1938 Rang.

—Ss. 302 and 304—*Offence under—Accusation inflicting injury in sudden fight on deceased.*

Where in a course of sudden quarrel between the accused and the deceased, the deceased expressed his

PENAL CODE (1860), S. 302.

inevitable. The existence of a few small blood stains on a man's shirt or *dhoti* is not enough to found a conviction on in itself, though it is important corroborative evidence when the accused is directly implicated by other evidence or circumstances. (*Grille and Bose, J.J.*) SHALIGRAM v. EMPEROR. 10 R.N. 185 = 39 Cr.L.J. 105 = 172 I.C. 213 = A.I.R. 1938 Nag. 52.

—Ss. 302, 304 and 36—*Scope—Accused so intoxicated as to be unable to form intent to kill—Offence committed.*

culpable homicide if the offender causes death by doing an act with the knowledge that he is likely by such act to

therefore be convicted under S. 304 and not under S. 302 (*Roberts, C. J. and Sharpe, J.*) SYED ARMED v. EMPEROR. 173 I.C. 299 = 10 E.R. 335 = 39 Cr.L.J. 300 = A.I.R. 1938 Rang. 15.

—S. 302—*Offence under—Injuries caused by accused resulting in gangrene and causing death*

Where a person was seriously injured by the accused and died subsequently, but in *post mortem* exam it was found that the immediate cause of death was gangrene which had set in in the right foot and

offence would be one of culpable homicide only (*Moody, J.*) NGA HPEIK v. THE KING.

176 I.C. 103 = 11 E.R. 39 = 99 Cr.L.J. 689 = A.I.R. 1938 Rang. 210.

—S. 302—*Sentence—Crime committed in state of*

Where therefore
in a state of
however slight,
of law should
J.J.) NGA PO

1 HAN v. KING. 175 I.C. 431 = A.I.R. 1938 Rang. 448.

death—*Death due to infection.*

Where an injury of nature to cause death and the death took place fact however would be responsibility of the accused. (*Spargo, J.*) NGA MYAUK NYO v. EMPEROR.

174 I.C. 338 = 39 Cr.L.J. 412 = 10 E.R. 401 = A.I.R. 1938 Rang. 56.

—S. 302—*Poisoning—Administration of dhatura by wife to husband—Duties to get rid of him—Inference—Presumption of guilt.*

If one deliberately administers a common poison like dhatura the effects of which are fairly well known, it is no defence to say that one failed to grade the exact dose correctly so as to cause some injury short of death. Where dhatura was administered in a fatal dose to a husband by the wife, with a view to get rid of him in order to continue her relations with her paramour, the wife is guilty of murder. (*Grille and Digby, J.J.*) MT. MINAI v. EMPEROR. 174 I.C. 388 = 39 Cr.L.J. 405 = 10 E.R. 382 = A.I.R. 1938 Nag. 318.

—S. 302—*Proof of offence—Blood stains on clothes—Evidentiary value of.*

Villagers often have blood-stains on their clothes. Their occupation is of such a nature as to render this

CODE, S. 439.

1937 M.W.N. 1241.

—S. 302—*Sentence—Duty of Court—Conviction of four persons for murder of one man—Proper sentence.*

It is no part of the duty of a Criminal Court to be influenced by public feeling in the matter of awarding sentence on conviction of an accused in a trial for murder. Its duty is to administer the law. The law says that the proper sentence for murder is death, and that when, on a conviction for murder, the Court passes any sentence other than a sentence of death, the Court shall state in its judgment the reasons why the sentence of death was not passed. The state of public feeling, even if there is a general public feeling against capital punishment, is not an admissible reason for refraining from passing the sentence of death. Nor is it permissible to refrain from sentencing the murderers to death merely because their numbers exceed the numbers of their victims. When four persons have together planned and executed the murder of a single person, each of them must be sentenced to death unless there are some legal reasons for not doing so. (*Burn and Lakshmana Rao,*

PENAL CODE (1860), S. 302.

J.J.) LAKSHUMANNA, *In re*. 1938 M.W.N. 1166—
48 L.W. 750 = (1938, 2 M.L.J. 1028.

—S. 302—Sentence—General rule as to—Difference
between Ss. 302 and 396. See PENAL CODE, SS. 396
AND 302. 1938 A.W.R. (H.O.) 642.

—S. 302—Sentence—Injuries not on any vital part.
In cases in which none of the vital parts has been
touched, and yet the victim has been beaten in a most
merciless manner and been practically pounded to death,
sentence of death is proper in the absence of any
extenuating circumstance. (*Tek Chand & Ram Lal, J.J.*)
WARIAM SHER MOHAMMAD v. EMPEROR.

A.I.R. 1939 Lah. 834.

—S. 302—Sentence—Lesser penalty—If not just-
ified.

The deceased, who was the wife of the accused, was
a son, murdered the deceased.
Held, that it was not a case in
penalty of law should be imposed and
justice would be met by a sentence
for life (*Young, C.J., and Tek Chand, J.*) KARTAR
SINGH v. EMPEROR. 176 L.O. 668 = 11 B.L. 224 =
39 Cr.L.J. 769 = 40 P.L.R. 864 =
A.I.R. 1938 Lah. 558.

—S. 302—Sentence—Murder committed for
attack on leader of religious community.
It would be dangerous in this country to give cause
for belief that death would not as a rule result from
murders, even when they are committed for attacks on
leaders of religious communities, or under their influence,

death—Offence committed.
Where the accused struck an old man on the head
with a *takua* thereby causing injuries of simple nature,
and the fractures which caused the death of the old man
were caused when he was knocked over by the accused,
it is impossible to hold that the act of knocking him

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PENAL CODE (1860), S. 304-A.

Cases of homicide cannot be decided by adherence to
mechanical rules, the decision in each case must depend
upon the knowledge and intention with which the injuries
were inflicted, and the knowledge and intention of the
culprit must be judged with reference to the particular
circumstances of each case, and in arriving at a decision
on this crucial point reported cases can be of very little
assistance. To establish the offence of murder, it is not
sufficient that the injury inflicted was in fact sufficient in
the ordinary course of nature to cause death; it must
further be proved that the assailant intended to cause
an injury of this kind. Where it is doubtful whether
the accused had the intention of causing injury sufficient
in the ordinary course of nature to cause death, and
death is caused by a blow inflicted with a sharp edged
weapon with such violence as to sever completely the
offence of culpa-
ter, under the first
and not of murder
J.J.) NGA AUNG

5-10 B.R. 485 =
1938 Rang. 158.

299 AND 300.

32 B.L.R. 18.

—S. 304, Part 2—Accused striking deceased with
iron rod—Sentence.

The deceased and the accused were neighbours. One
day the accused's father began to dig a water channel
close to the wall of the deceased's house. The deceased
begged him to dig it a little distance away so as to avert
any danger of his wall collapsing. This request led to
an altercation and accused's father and the deceased
grappled with each other. While they were doing so, the
up with an iron rod with which the water-
being dug and seizing it with both hands
on the deceased's head. The deceased fell

the accused must be credited with the
that the heavy iron rod was likely to cause
could therefore be rightly convicted under

part 2 of S. 304 However in the circumstances of the
case the sentence of five years' rigorous imprisonment was
unnecessarily severe. There was no antecedent enmity
between the parties. The quarrel arose very suddenly.
The choice of weapon was fortuitous and was not one
which indicated any real intention to kill or to cause

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Plea of—Sufficiency.

PENAL CODE (1860), S. 304 A.

PENAL CODE (1860), S. 388.

10 B.S. 288 = A.I.R. 1938 Sind 100.

—S. 304 A—*Consistency—Essentials for—Mere carelessness—Sufficiency.*

S. 304-A, like other sections of the Penal Code, requires a *mens rea* or guilty mind. The rashness or negligence must be such as fairly to be described criminal. Mere carelessness under S. 304-A, A loaded with wooden sleep; drove the lorry several times one occasion when the lorry not being driven fast, one of the stone pillars. The person standing behind it

Held, that it could not be said not caused directly by the act of it that it was not the lorry itself but struck the pillar was a matter of no consequence. Similarly the fact that it was not the sleeper itself but stone in a pillar which struck the deceased did make the act of the driver merely the indirect remote cause of the deceased's death. However, in the circumstances of the case, the driver was guilty of only an error of judgment and not of criminal rashness. He therefore could not be convicted under S. 304-A. (Davis, J.C.) KANJI JAMA v. EMPEROR.

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Held, (1) that the conviction was correct and must be confirmed; (2) that the sentence was far too lenient even for a first offence, in view of the fact that the accused was guilty of reckless disregard of the safety of his passengers' lives to so never again be licensed to the sentence should there rigorous imprisonment (Newsam, J.) MOHAM

—S. 323—Offence peace. See CR. P. CODE. THE PEACE.

—S. 323—Some of assailants not actually striking victim—Whether can be convicted.

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—S. 320—Apparatus—Piercing of radial artery and death ensuing due to haemorrhage—Offence. See

such cases.

The act of nose cutting is one which imports deliberate design of a particularly brutal and cruel character and must be severely punished. A sentence of nine months' rigorous imprisonment for such an offence is inadequate. Accused and his wife used to quarrel with

as convicted under S. 326,
nine months' rigorous im-

Held, that the sentence of nine months was inadequate

40 Bom L.R. 832 = A.I.R. 1938 Bom. 430.

—S. 337—"Rashly and negligently"—Driver of motor faced by sudden emergency and having to make quick decision—Accident caused by act of pedestrian—

here, going at a speed which is not excessive, he the car and, by swerving, nearly succeeds in z the pedestrian, but owing to the stick of the an being knocked by the mudguard, the pedes- thrown clear and gets injuries the accident is himself, rashness or negligence rred so as to render the driver der S. 337, I. P. Code. To do so

would be taking an unduly strict view of the duties of a motorist. (Gruer, J.) MADHORAO v. EMPEROR

1938 N.L.J. 44

—Ss. 337 and 307—Shooting blindly with shot

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ney, J.)

176 I.C. 150 = 11 R.R. 31 (2) = 39 Cr L.J. 692 =
A.I.R. 1938 Rang. 220.

—Ss. 338 and 279—Negligence—What it means

there was no negligence. (Niyogi, J.) DEVIDAS v. EMPEROR.
1938 N.L.J. 226.

PENAL CODE (1860), S. 341.

—S. 341—*Applicability—Stepping a person by force by catching his hand by bull—Offence.*

Where it was found that the accused twice stopped the complainant by force, catching hold of his bandy ball.

Held, that it was quite enough to sustain the conviction of the accused under S. 341, I. P. Code. (*Burn, J.*) MUHAMMAD YUSUF SAHIB, *In re*.

49 L.W. . . .

—S. 342—*Offence—must be used—Sham or*

To constitute the offence, it is required and not mere show or threat of force. (*King, J.*) KOYA MOHIN v. EMPEROR.

1937 M.W.N. 1195 (1).

—S. 353—*Applicability—Panchayat Board—Warrant of attachment not regularly signed but bearing impression of facsimile rubber stamp of President—Legality—Obstruction to attachment—Hurt caused to officer executing warrant—Offence—Madras Local Boards Act, S. 214 (2).*

S. 353, I. P. Code (as well as S. 186, I. P. Code, the offence under which is included in the offence under S. 353), does not presuppose the existence of a legal warrant under which the public servant should act. If

bill collector entrusted with the execution of such a warrant and causes hurt to the bill-collector, he is guilty of an offence under S. 353, I. P. Code, and is liable to conviction (*Horwill, J.*) PEEK MASTHAN ROUTH v. EMPEROR 177 L.O. 418=

39 Cr.L.J. 879=11 E.M. 332=1938 M.W.N. 418=47 L.W. 673=A.I.R. 1938 Mad. 659.

—S. 353—*Resistance to warrant under S. 88, Cr. P. Code—Absence of proclamation under S. 87, Cr. P. Code—Conviction under S. 353, if justified.*

When once a warrant is issued under S. 88, Cr. P. Code, the mere fact that a proclamation under S. 87 had not already been issued, would not justify the conclusion, that those who went to execute the warrant were not acting in execution of their duty as public servants. All that is necessary to justify a conviction under S. 353 of the Penal Code is that the person

39 Cr.L.J. 570=1938 A.W.R. (H.C.) 121=A.I.R. 1938 All. 220

—S. 361—*Applicability—Father of child deceitfully getting child from wife's custody to own custody—Offence.*

A person who is in fact the father of a child, and in law entitled to the lawful custody of the child cannot come within the scope of S. 361, I. P. Code, and his act in taking the child from the keeping of his mother can not amount to an offence of kidnapping from lawful

PENAL CODE (1860), S. 375.

DARAYYA v. KOTAYYA.

47 L.W. 568=

I.L.R. (1938) Mad. 805=178 I.O. 67=

39 Cr.L.J. 993=1938 M.W.N. 385=

A.I.R. 1938 Mad. 656=(1938) 1 M.L.J. 670.

—S. 361. *Except—Sleep.*

The *Excep.* to S. 361 simply is that the section does not extend to the act of any person who in good faith

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control of her

J.J. KAT

6 I.C. 456=

11 R.O. 139=39 Cr.L.J. 751=A.I.R. 1938 Cal. 475.

—Ss. 366 and 376—*Charges under—Conviction under S. 366 only—Legality.*

Where the accused are charged under Ss. 366 and 376, it is open to the jury to convict the accused under S. 366 and acquit them under the main charge under S. 376 and there is no inconsistency in such a finding. Where a man has illicit intercourse with an adult woman with her consent after abducting her, it is not rape under the law. In such a case, the accused will be held guilty under S. 366 but not under S. 376. (*J. G. Ghose and Bartley, J.J.*) EBADI KHAN v. EMPEROR.

176 I.C. 104=11 R.O. 36=39 Cr.L.J. 674=

A.I.R. 1938 Cal. 460.

—*Abducted—Value of.*

366, the evidence of the

cited must be taken with

lacker, J.) MOHAMMAD

J. 97=11 L.R. 265 (2)=

844=40 P.L.R. 730=

A.I.R. 1938 Lah. 474.

—S. 366—*Young man abducting girl of marriageable age—Presumption as to his intention*

be compelled to marry against her will. In cases of forcible abduction, there can seldom be direct evidence as to the actual intention of the abductor and that intention must be inferred from the circumstances of each case under S. 114, Evidence Act. Human nature being what it is, whenever one finds a young man abducting a girl of marriageable age, the first natural presumption must be that he has abducted her with the intention of having sexual intercourse with her either forcibly, or with her consent after seduction, or after

If he has any intention other than that suggested by the natural circumstances of the case, it lies upon him under S. 106, Evidence Act, to prove that intention. (*Blacker, J.*) MOHAMMAD

EMEROR 177 I.C. 97=11 R.L. 265 (2)=

39 Cr.L.J. 844=40 P.L.R. 730=

A.I.R. 1938 Lah. 474.

—S. 366 A—*Offence under—Proof.*

The mere circumstance that the accused accompanied a person who was alleged to have raped the girl or he was trying to sell the girl, possibly for immoral purposes, may be suspicious but is not sufficient to establish the essential ingredients of the offence under S. 366 A. (*Ram Lal, J.*) HARIAL v. EMPEROR

177 I.C. 938=39 Cr.L.J. 967=40 P.L.R. 903=

A.I.R. 1938 Lah. 684.

PENAL CODE (1860), S. 376.

Inference of rape if justified.

The mere existence of the injury not necessarily and inevitably justify there had been rape. (*Mackney, J.*)

v. THE KING. 177 I.C. 710—11 E.R. 160—

39 Cr.L.J. 944—A.I.R. 1938 Rang. 298.

—S. 379—Fishing in tank connected with a river

—Bona fide claim of right—Fishes if taken 'dishonest-ly.'

Where a person takes fishes from a tank which is so connected with a river that the fish and water come from the river to the tank and vice versa, he cannot be held to

SINGH v. EMPEROR.

1938 O.W.N. 1096—

175 I.C. 256—1938 O.A. 902—

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shown, and the taking of such cattle is theft and not criminal misappropriation (1892/96) 1 U.B.R. 238, Appr. (*Mosely, J.*) PAW DIN v. THE KING

1938 Rang L.R. 63—175 I.C. 515—10 E.R. 503—

39 Cr.L.J. 607—A.I.R. 1938 Rang. 138.

—S. 379—Seizure of debtor's property to force payment of debt—If an offence.

Where a creditor seized the leather bag on the back of his debtor's buffalo and took it away with a view to force the repayment of the debt, it is an offence as the intention was clearly to retain the property till the debt was paid, and in the event of its non payment the intention must be presumed to be to keep the property for good. (*Grille, J.*) BHAGYA v. EMPEROR.

1938 N.L.J. 302.

—S. 380—Sentence of whipping—Accused aged 19

the general rule under S. 302 is that a sentence of death should follow unless reasons are shown for giving a lesser sentence. (*Bennet and Verma, J.J.*) LAL SINGH v. EMPEROR.

I.L.R. (1938) All. 876—

1938 A.C. 107—1938 A.L.R. 881—

1938 A.W.R. (H.C.) 642—1938 A.L.J. 943—

A.I.R. 1938 All. 625.

—S. 397—Applicability—Construction under—Conditions—Actual infliction of blows or injuries with dangerous weapons—Necessity.

PENAL CODE (1860), S. 403.

conviction under
ould actually in-
in their posses-
t dangerous wea-

near exhibition of them, the
be robbed are likely to be
at the commission of the

and, they can be punished

under S. 397. (*Horwail, J.*) THEVAR SERVAI v.

EMPEROR. 173 I.C. 450—1938 M.W.N. 215—

10 E.M. 587—39 Cr.L.J. 323—

A.I.R. 1938 Mad. 477.

—S. 401—Charge under—Evidence—Sufficiency—Evidence of actual association of particular accused—Necessity.

a big gang was in
of depredation on
ra and Ceylon and
associated together

parts so distant as

Calcutta, Midnapore, Karachi, various parts of Ceylon and Rangoon, that is sufficient to support a charge

and substantial enough to warrant a conviction. (*Horwail, J.*) ARUNUGAM v. EMPEROR

1938 M.W.N. 595—48 L.W. 639—

A.I.R. 1938 Mad. 858.

—S. 403—Accused taking ornaments from complainant promising to marry his daughter to him—Accused subsequently marrying his daughter to another and denying receipt of ornaments—If guilty of offence.

Where on the accused promising to marry his daughter to the complainant, the latter handed over to the accused certain ornaments as presents to the bride in consideration of the marriage, but the accused subsequently gave his daughter in marriage to some other person and denied all knowledge of the ornaments.

Held that the accused was technically guilty of dishonest misappropriation under S. 403, I.P. Code, but the appropriate proceedings would have been the Civil Courts. (*Derbyshire, C.J. and J.*) MOHORI LAL CHOWDHURY v.

42 C.W.N. 785.

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177 I.C. 278—11 E.L. 288—39 Cr.L.J. 851—

40 P.L.R. 870—A.I.R. 1938 Lah. 634.

—S. 403—Offence under—Proof of receipt and retention—Presumption—Plea of return or refund—Onus.

When once it is proved that a Patwari knowingly received certain sum of money in excess of the land revenue and retained it, without properly accounting for it, then the presumption arises that the money continued to remain with him and as such when a plea of return or refund is raised, the onus is on the accused to prove such return or give any other reasonable explanation. (*Gruer and Niyogi, J.J.*) PROVINCIAL GOVERNMENT.

PENAL CODE (1860), S. 405.

and agreeing to hold goods and proceeds thereof in trust for another—Dealing with proceeds in violation of terms—Offence.

It cannot be broadly stated that a person cannot commit criminal breach of trust of his own property and that in order to bring a case within S. 405 there must be actual delivery by the owner. Where a person by hypothecates goods in his shop as a collateral security against an advance and agrees to hold the goods and the proceeds thereof in trust and to pay the proceeds received by him, that person, by this trust receipt, gives a beneficial interest in the goods to another and holds the goods, with which he is entrusted as legal owner, in trust for another. Hence if he deals with the proceeds in violation of the terms of the trust he commits an offence under S. 405 provided he has the necessary criminal intention (*Datta, J.C.*) **GORINDRAN v. EM PEROR**
174 I O 560 10 B S 266—
39 Cr L J. 509—A I R 1938 Sind 73

—S 405—Applicability—Pawnee—Sub pledge by—Offence

The pawnee or pledgee has the right to make a sub-pledge of the goods pawned to him to interest, and a sub-pledge of the pledgee be regarded as amounting to criminal under S. 406, I. P. Code (*Pandurang Kow, J.*) **NEMJ CHAND PARAKH v. EMPEROR.**

LLR (1938) Mad 639—178 I O 391—
39 Cr L J 716—11 B W 71—
1938 M W N 255—47 L W 359—
A I R 1938 Mad 551—(1938) 2 M L J 161

—S 405/511—Offence under—Holder of lottery ticket lodging it with authorities for payment of prize money—Shareholder in ticket—If can file complaint against him.

Where under the terms of a lottery the accused is the

him under S 406/511, I. P. Code, by a shareholder in the ticket on the allegation that the accused is denying this fact and is trying to take the prize money all for himself (*Bartley and Henderson, J.*) **DHANJ SARDAR v. HAKIM DOSAD.** 42 C W N 648

—S. 408—Employee taking away his security deposit before adjustment of accounts—If guilty of offence.

An employee is not entitled to take away from his employer in a surreptitious manner the money deposited by him as security, until he receives his discharge after the adjustment of his accounts in the ordinary course. If he does so there is at least a temporary misappropriation in respect of the amount so taken, although there is no evidence that any money beyond that amount is due from him to his employer (*Jack and Khundkar, J.*) **SURENDRA NATH BASU v. EMPEROR.**

ILR (1938) 2 Cal 287—176 I O 126—
II R C 41—39 Cr L J 691—
42 C W N 618—A I R 1938 Cal 451

—S. 409—Applicability—Trust—When created—Existence as to—Test

The existence or non existence of a trust in any particular case does not depend upon the use of terms employed by the parties but upon the actual of the case. The complainant's firm had agreed

PENAL CODE (1860), S. 409.

to receive certain interest on the money advanced and also a commission on sales effected by the accused. The sale proceeds of the goods sold were to be paid into the complainant's firm. As soon as the goods were stored in the godown, the ownership in the bags was to vest in the complainant. The accused was solely responsible for the sale proceeds of goods sold

Held, that the money with which the goods were purchased or the goods after they had been purchased were not the property of the complainant's firm entrusted to the accused as his agent. Therefore there could be no offence under S 409 in the event of any default in payment of the sale proceeds by the accused. (*Lobo, J.*) **KARAMALI MA'JI v. EMPEROR**

174 I O 145—39 Cr L J. 389—10 B S 244—
A I R. 1938 Sind 57.

—S. 409—Lambardar failing to deposit collected land revenue—If commits an offence.

The failure of a lambardar to deposit land revenue collected by him does not constitute an offence under S 409. As the lambardar is bound to pay on due date all the land revenue recoverable from an estate, irrespective

ment and the lambardar over the question of recovery of land revenue is consequently one of a civil nature. (*Almond, J.C.* and *Mir Ahmad, J.*) **ADVOCATE-GENERAL, N.W.F.P. v. MIRAJAN SHAH.**

176 I O 406—11 B Pesh 7 (2)—39 Cr L J 741—
A I R 1938 Pesh. 25.

—S 409—Offence alleged of conspiracy to commit breach of trust and specific charges with regard to definite sums of money—Policy of splitting up charges—Propriety.

A Secretary of a Co-operative Central Bank and the

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sums of money. When the case came on for trial the prosecution split up the case to be tried into four separate trials. In the first trial the Secretary was given three years under S 409. He was also convicted of conspiracy. No separate sentence was passed upon him. In the second trial, he had been given two years under S 409. No separate sentence for conspiracy was passed upon him. Assistant Secretary was given three years under S 409 in the first trial and four years in the second trial. No separate sentence was passed upon him on the conspiracy charge. The prosecution in the first trial alleged a separate conspiracy to embezzle a particular sum of money. In the second trial, they went a little further and alleged a separate conspiracy to embezzle money coming from a certain bank.

Held, that though on a technical ground the two conspiracies of which the accused were found guilty were not the same, yet it was really so impossible to distinguish them that, if different sentences had been imposed, the High Court most certainly would have made them concurrent.

Held, further, that the method of splitting up the charges as selected by the
improper
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a sentence

PENAL CODE (1860), S. 411.

that would be sufficient. There would then have been no necessity for proceeding with the trial of any more charges. The method of proceeding with an indefinite number of trials and imposing sentences to take effect one after the other was improper. (*Henderson and Khundkar, J.J.*) JAGADISH PRASAD v. EMPEROR.

13 U.W.N. 23—A.I.R. 1938 Cal. 697.

—S. 411—*Dishonest intention—Failure to prove—If fatal—Inference from possession of stolen property—If justified.*

It is of course not possible for the prosecution to prove what is the mind of a person accused of an offence under S. 411, I. P. Code, but usually the possession by him of stolen property knowing it to be stolen is a sufficient fact upon which to base an inference of intention and to convict him. (*Burn and Lakshmana Rao, J.J.*) APPALASWAMY, *In re*.

1938 M.W.N. 1124 (1)—48 L.W. 699.

—Ss 415 and 419—*Offence under—Accused pointing out third person to process server and trying to get him falsely tried.*

P had become friendly with one R who was a spendthrift and drunkard. R died a premature death on 30th June, 1936. On 2nd July, wife of P made an applica-

R. The person admitted to be R but refused to accept service and when B was taking him to Administrative Subordinate Judge, he slipped away. Enquiry followed and P was prosecuted and convicted under S. 419, I. P. Code.

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about by P's deception upon B would have been a departmental enquiry against him. (*Blacker, J.*) GIAN SINGH v. EMPEROR.

A.I.R. 1938 Lah. 828.

—S. 417—*Applicability—Sending bogus insured letter—Offence.*

Whatever offence may be committed when a bogus insured cover is sent through the post, the offence of cheating the addressee within the provisions of S. 417 is not committed. (*Davis, J. C.*) AYODHYA SITAL PRASAD v. EMPEROR.

178 I.C.

A.I.R. 1938 Si

—S. 417—*Ingredients of offence—Mere*

PENAL CODE (1860), S. 420.

then such damage or harm is too remote to be within the provisions of the section, which contemplates that the act done is in itself likely to cause damage or harm and which is not dependent for damage or harm upon the entirely problematical action of some other person. To use a trite phrase, the act done or omitted to be done must be the *causa causans* of the harm caused or likely to be caused. (*Davis, J. C.*) AYODHYA PRASAD SITAL PRASAD v. EMPEROR

178 I.C. 226=

A.I.R. 1938 Sind 193.

—S. 420—*Applicability—Conviction for running a lottery dishonestly—Facts necessary to sustain.*

Before a charge under S. 420 of dishonestly running a lottery, could be established against the organizers of the company it must be shown definitely that the company dishonestly failed to pay the amounts to the persons shown in the list. It must also be shown that the persons who purchased the tickets purchased them under the influence of the apparent guarantee of good faith held out by these lists in regard to the higher 'prizes'. The organizers of a certain loan company offered to give loan to persons who applied for them on special forms or tickets for which they had to pay two annas. There was no guarantee to grant loans. The company published

and convicted under S. 420.

Held, that under the circumstances the conviction was unsustainable. (*Macneay, J.*) MAUNG BA TWIN v. THE KING

178 I.O. 113=

A.I.R. 1938 Rang. 301.

of charms and
bisc that objects
hardship or pre-
and purchasing
to look at moon

unwinking for fifteen minutes—Persons purchasing unable to do so—Offence of cheating—If committed.

Petitioner in his own name and under thirteen other aliases carried on a business of selling charms and incantations which he advertised in a number of newspaper in several Provinces of India and despatched by value payable post to persons answering the advertisements. The advertisement was to the effect that certain

which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. But when the section says "which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property," it clearly means which act or omission in itself causes or is likely to cause damage or harm to that person in body, mind, reputation or property and that if that damage or harm is dependent upon the future act of some other person

have sent for it, and the same was accepted by the Courts in evidence against the accused.

Held, that the advertisement gave a definite assurance that there was no necessity for either hardship or preparation, but that the condition referred to was contrary to that assurance, because the feat of looking at the moon unwinking for fifteen minutes was, if not impossible, at any rate, beyond the powers of ordinary human beings except by long training and preparation, and that

PENAL CODE (1860), S. 421.

the complainants having acted on the assurance of the petitioner, the accused was guilty of the offence of cheating, and was liable to conviction. (*Fazl Ali and Rowland, J.J.*) AKHIL KISHORE RAM v. EMPEROR.

174 I.C. 635—10 Pat L.T. 375—4 B.R. 466—
1938 P.W.N. 93—39 Cr.L.J. 442—10 R.P. 641—

A.I.R.

—S. 421—Offence under—Shopl.
goods on credit—Sale by him without pay.

The property of a debtor cannot be according to law save after the provisions of the relevant enactments have been complied with. It cannot be held, without further proof, that a shopkeeper who has stocked his shop with goods obtained on credit and who sells these goods without making any payment to his creditors has committed an offence punishable under S. 421, Penal Code. In his own in spite of the fact that he is not causing the property he is not any right of theirs. MOHAMED THE KING. 176 I.C. 667—
39 Cr.L.J. 767—11 B.R. 70—A.I.R. 1938 Rang. 212.

nothing at all as to the attachment of property. (*Allsup, J.*) TARA SINGH v. EMPEROR.

1938 A.C. Cr. O. 45—1938 A.L.J. 528—
11 B.A. 158—1938 A.W.R. (H.O.) 361—
176 I.C. 980—1938 A.L.R. 689—
39 Cr.L.J. 840—A.I.R. 1938 All. 449.

—S. 425—Mischief what constitutes—Filling up ditch dug by another—If mischief.

To constitute mischief it is necessary not only that wrongful loss or damage to the public or to any person, be intended or he likely but also that any property should either by destroyed or any such change should occur in any property or in the situation destroys or diminishes its value or utility injuriously. Filling up of a ditch dug by the ant, by the accused, cannot be said either wrongful loss to him or to affect his property, so as to diminish its value or utility. The fact that the fruits of his labour are destroyed, cannot make it an offence under S. 426 for 'property' in S. 425 means tangible property capable of being forcibly destroyed. (*Zia-ul Hasan, J.*) RAM KOOP v. EMPEROR.

1938 O.L.R. 509—

PENAL CODE (1860), S. 441.

sakhuat forests; and it was found that the tenants had no right to cut down trees, such as sakhuat saplings from such forests, except jungle thags.

Held, that the very fact that the accused tenants went in a body to the forest and cut down about 50 cartloads of sakhuat saplings (which could not be called

right failed and therefore they were liable to conviction under S. 426, I. P. Code. (*S.C. Chatterji, J.*) PUNIT BAKHI v. EMPEROR. 111 Pat L.T. 656.

—S. 426—Applicability—Watercourse flowing through complainant's land—Obstruction to watercourse by complainant—Accused having rights of watercourse

the latter who has rights of watercourse commits no offence in cutting or removing the obstructions. The act of the owner of the plot by the obstruction in exercise of the latter's right cannot be considered to be wrongful. The latter cannot be convicted of the offence under S. 426, I. P. Code. A trespasser's act of trespass immediately gives him a right of possession against the person whom he ejects. (*Jamir, J.*) DEOCHARAN SINGH v. RAM SUNDER SAHU.

176 I.C. 602—5 B.R. 112—1938 P.W.N. 642—
19 Pat L.T. 703—A.I.R. 1938 Pat. 538.

—S. 426—Offence under—Drain constructed on passage over which accused has right of way—Demolition of drain by accused.

In case of a private easement-right it is not open to the dominant owner to remove the obstruction of his own accord by taking the law in his own hands, unless the obstruction has actually become a nuisance. Where a drain is constructed by the complainant on a passage

AGARWALA

I.L.R. (1938) 1 Cal. 680—

177 I.C. 1000—A.I.R. 1938 Cal. 662.

—S. 441—Offence under—Entry at night in complainant's house to have intercourse with complainant's daughter by invitation.

It must depend on the facts of each case, as to whether a person in possession of a house, in the circumstances, is an accused enters with intent to have intercourse with an unmarried and his daughter by invitation, the accused cannot be convicted of the offence of 'primary' or even the 'subsidiary' offence of intent to annoy the person in possession, if he had taken all possible precautions.

The mere fact that he knew, that, if discovered, his presence would cause annoyance to the person in possession of his house, is by itself not sufficient to constitute an offence under S. 441. 17 P.R. 1908. (*Young, C. J., Teh Chand and Mondal, J.J.*) MAJID v. EMPEROR. 176 I.C. 437—22 Z.L.

ing and house repair, for agricultural purposes and for fuel, free of charge, they were excluded from the

PENAL CODE (1860), S. 441.

—S

one house to

—If guilty of trespass in house or out house

Where a person one night passes stealthily through the court yard of one house with the intention of committing adultery in another adjoining house, such person is not guilty of trespass in respect of the former house under second alternative of S. 441. It cannot be said that such person had intention to annoy or insult the occupant of the former house and even if he could be supposed to have known that, if discovered his presence there might cause annoyance to any person living there, this would not make him guilty of committing trespass in that house. Such person is, however, guilty of trespass in respect of the former house under first alternative of S. 441, because S. 441 means that if a person enters upon the property with intent to commit an offence on that property or on any other property or with respect to a person who is or is not in possession of the property entered upon he is guilty under it. (*Young, C. J. Tek Chand and Menon, J.*) MAHOMED YAR v. EMPEROR I.L.R. (1933) Lah. 462-176 I.C. 410-59 Cr.L.J. 734-11 B.L. 210-40 P.L.E. 813-A.I.R. 1933 Lah. 514 (F.B.).

—S. 442—Building—Shop with an awning—If constitutes.

The erection of an awning does not constitute a shop, a building within the meaning of S. 442, I. P. Code, when the shop in question had neither a wooden, mud or one brick wall (*Yorke, J.*) EMPEROR v. SHANKAR DAVAI. 177 I.C. 616-11 B.O. 59-59 Cr.L.J. 937-1933 A.C. 100-1938 O.A. 740-1938 I.L.R. 432-1938 O.W.N. 960-A.I.R. 1938 Oudh 263

—S. 447—"Possession"—Order under S. 144, Cr. P. Code—Relinquency.

Where a person was restrained from doing a particular act on a particular land by an order under S. 144, Cr. P. Code, although that order may not be taken into consideration for establishing the possession of the complainant in a trial for an offence under S. 447, Penal Code, alleged to have been committed by that person, it is relevant for the purpose of testing bona fides of the person against whom that order was made. (*Agarwala, J.*) RAMKISHUN AGRAWALLA v. EMPEROR. 173 I.C. 747-4 B.R. 350-28 Cr.L.J. 361-10 B.P. 454-A.I.R. 1938 Pat. 131.

—S. 448—Offence under—Accused entering house in possession of complainant in assertion of right in London to annoy—Presumption.

Where the accused persons entered a house in which there was a dispute, in the possession of the complainant and took possession of it in the assertion of their claim.

Held, that the accused must have known that their conduct was bound to annoy the complainant, who was admittedly in possession and legally they must be presumed to have the intention to 'annoy' at any rate and that, therefore, they were guilty of the offence under S. 448, I. P. Code. (*Shree, J.*) GHULAM AHMAD v. EMPEROR. 40 P.L.R. 757-A.I.R. 1938 Lah. 843

—S. 471—User—Document mentioned in affidavit of documents—Production at instance of opposite party. The accused had filed a suit for dissolution of partnership in which he was required to file an affidavit of documents which were in his possession relating to any matter in question in the suit. The accused had mentioned in it a certain document, namely, a delivery order relating to certain bags, but he did not produce it in

PENAL CODE (1860), S. 482.

the defendants who required the document was thereupon produced. The document was thereupon produced and the accused was prosecuted under S. 471.

Held, that the circumstances were not enough to establish a charge under S. 471 as the accused was forced by the defendants to refer to this document in evidence. By mentioning the document in his affidavit of documents in his possession, it may be that he showed that at one stage he had made preparation for using the document, but no more than that could be inferred. (*Mathney, J.*) ABDULSATTAR v. THE KING. 175 I.C. 438-10 B.R. 497-59 Cr.L.J. 592-A.I.R. 1933 Rang. 194.

—S. 477-A—Falsification of accounts—Intent to defraud—Meaning—Ignorance that wrongful loss would be caused—If a good plea in defence.

A reference to S. 25 of the Penal Code shows that the expressions 'fraudulently' and 'with intent to defraud' are synonymous. If there is the intention by the deceiver practised to cause wrongful loss that is dishonest; but even in the absence of such an intention, if the deceiver act wilfully imposes any one to risk of loss, there is fraud. Where the accused had prepared certain bills for payment to a contractor on the basis of fictitious entries in his measurement book, of works which admittedly were not measured, and thereby enabled the contractor to draw more sums than were due to him.

Held, that there was wilful fabrication of measurement book and bill with intent that the contractor's bill might be passed without measurements and that these acts were fraudulently and amounted to an offence punishable under S. 477-A, Penal Code.

Held further, that it was no answer to the charge, for the accused to say that he did not know that wrongful loss would be caused to one party and a wrongful gain to the other. (*Varma and Rowland, J.*) SUKHAMOY MAITRA v. EMPEROR. 16 Pat. 688-173 I.C. 759-4 B.R. 337-1938 P.W.N. 48-19 Pat. L.T. 297-10 B.P. 445-59 Cr.L.J. 374-A.I.R. 1938 Pat. 165.

—S. 478—Trade mark—Requirement—Mark to be "distinctive"—Pictorial representation.

A trade mark as defined by S. 478, Penal Code, implies that the mark must be 'distinctive' in the sense of being 'adapted to distinguish the goods of the proprietor of a trade mark from those of other persons'. A merely descriptive mark would be obviously not a

representative to the public. (*Agarwala, J.*) RAMKISHUN AGRAWALLA v. EMPEROR. 173 I.C. 747-4 B.R. 350-28 Cr.L.J. 361-10 B.P. 454-A.I.R. 1938 Pat. 131.

—S. 482—Offence under—Facts to be determined.

Where a person is charged with an offence under S. 482, Penal Code, what the Court has to determine is whether the trade mark claimed by the complainant was a 'distinctive' mark, and for that purpose, it has to take into consideration the extent to which its user had rendered the mark in fact distinctive of the goods in question. (*Sharma, J.*) LOKE NATH SEN v. ASWINI KUMAR DEVI. I.L.R. (1938) 1 Cal. 665-175 I.C. 144-10 B.R. 754-59 Cr.L.J. 537-66 C.L.J. 210-42 W.N. 112-A.I.R. 1938 Cal. 216.

PENAL CODE (1860), S. 469 C.

—S. 469 C.—*Intention to use as genuine—Proof—Possession of large number of counterfeit notes—Intention of intention—If justified.*

Where it is proved beyond doubt and admitted by the accused that the accused was in possession of 38 counterfeit currency notes knowing them to be stolen, and the accused's explanation that he had them in order to fast them on some one else is not believed, it is impossible to conceive of any other intent of the accused than the intention of genuine or that they may be used as large number of notes is an important intention has to be presumed. (P.W. No. 1000)
PUBLIC PROSECUTOR v. KONDALRAO.

1938 M W N. 1121—48 L W 754

—S. 434—*Contrivance—“Marries”—Meaning of*
The word “marries” used in S. 494 means marries by some form of marriage known to or recognized by the law. Merely showing that some form of marriage ceremony was gone through is not sufficient. The section does not refer to a valid marriage. A bigamous marriage cannot be a valid marriage, and apart from the bar of the first marriage, it may be that there may be some other legal impediment to the validity of the marriage of the man or woman, some legal impediment personal to the man or woman, such as consanguinity, yet if the second marriage be a form recognized that would be sufficient to satisfy the section. (Datta, J.)

KALAN v. EMPKOR. 39 Cr J 456—11 E S 1—A I R 1938 Sind 127

—Ss 494, 497, and 498—*Prosecution—Expediency—Duty of Court to prevent abuse.*

Judges should be particularly careful to Ss. 494, 497 and 498 are not abused for the purpose of private spite or persecution. (Datta, J. C. and Lobo J.)
MT. KALAN v. EMPKOR. 175 I C 461—39 Cr L J 656—11 E S 1—A I R 1938 Sind 127

—S. 498—*“Detention”—Meaning of—Married woman found living in accused's house—Accused having sexual intercourse—Offence.*

Providing shelter for a married woman is such an inducement as to amount to detention within the meaning of S. 498. Where a married woman was found living in the house of the accused for some time and sexual intercourse between them had taken place.

Held that there was persuasion or inducement of the woman as would come within the meaning of the word “detention”. (Agarwala J.)
BANARSI RAUT v. EMPKOR. 177 I C 706—19 Pat L T 795—5 B R 14—1938 P W N 817—11 R P 178—39 Cr L J 952—A I R 1938 Pat 432

—S. 439—*Defence—Limits.*

No man can ever be justified in disseminating defamatory matter unless he can bring himself within one of the exceptions to S. 499 I P Code, or unless his action is privileged in other respects. Having held that a person did not act in good faith it must be wrong to say that he was justified in acting as he did. (Ribeiro, C. J. and Dunkley, J.)
U KUN BARRISTER-AT-LAW in the matter of A I R 1938 Rang 394

—S. 499 Expt 2—*Applicability—Complaint of an individual member.*

According to Expt 2, S. 499 if a collection or company of persons as such is defamed, one of their members may make a complaint on behalf of the collection or company of persons as a whole but the defama-

tion of the complaint pl. (2) has

PENAL CODE (1860), S. 500.

no application. (Datta, J. C.)
AHMEDALI v. EMPKOR. 175 I C 9—10 E S 278—39 Cr L J 518—A I R 1938 Sind 88

—S. 499, Eighth Exception—*Applicability—Complaint to Police by residents of locality against acts of another and praying for protection against him—Offence—Contrivance for defamation—Legality—Cr. P. Code, S. 196—Complaint of Police Officer—Necessity*

against him, in the presentation of a petition to public officer with the intention of protecting the interests of the people who send the petition. The eighth exception to S. 499, I P Code, applies to the case and when the complainant admits that he does not know any of the petitioners personally, and there is no evidence of any express malice or enmity, good faith must be presumed, there can in such a case be no conviction for defamation. Further, the offence, if at all, is only one of giving false information to a public officer or of making a false accusation, falling under Ss. 182 or 211, I P Code, and S. 196, Cr P Code, bars

of the information or the accusation is found to be defa-

—S. 499, Exc 9—*Statement in answer to requisition by investigating officer under S. 161, Cr P. Code—Privileged occasion—If covered by Excep. 9 to S. 499, Penal Code.*

Where the alleged defamatory statement was made in answer to the requisition by the investigating officer under S. 161, Cr P Code, the statement being made on a privileged occasion would certainly come within the exception 9 to S. 499 of the Penal Code. (Venkata-ramana Rao, J.)
RANASWAMI NUDALIAR, in re 47 L W 138—(1938) M W N 217—(1938) 1 M L J 810.

some other section, then no prosecution under S. 500 would lie. Hence a complaint under S. 500 cannot be dismissed even if the same facts constitute also an offence under S. 182, and sanction required by S. 195 Cr P Code is not obtained. A I R 1935 Rang. 163—156 I C 598, Overruled, 73 Cal. 604 and A I R 1921 Cal 1, Approved. (Ragules, Motley and Ba U, JJ.)
U AUNG PE v. THE KING

1938 Rang L R 404—175 I C 915—11 B R 15—39 Cr L J 663—A I R 1938 Rang 232 (F B).

—Ss 500 and 120-B *Defamation by several—Concerted action—Joint trial—Legality.*

Where it appeared that the different accused both jointly and singly began at about the same time to make defamatory statements about the complainant to different persons, it is a case of criminal conspiracy and there can be no question of misjoinder where all the accused

PENAL CODE (1860), S. 500.

are tried together for an offence under S. 500, I.P. Code read with 120-B. *Bennet, J.*) TARPADO SHASTRI v. EMPEROR. 1938 A.W.R. (H.C.) 467=

1938 A.Cr.C. 75=1938 A.L.J. 769.
—S. 500—*Duty of Court—Accused not raising specific plea of privilege—Court—If bound to see whether case under any recognized exception.*

In a prosecution for defamation under S. 500, I.P. Code, even though the accused does not raise a specific plea of privilege, it would be the duty of the Court to

lodges a complaint against him under S. 500, I.P. Code, execution under justify it, on to avoid the he sanction of the Court was neither sought for nor refused. (*Jack and Khundkar, JJ.*) GURU PROSAD RAM GUPTA v. RAMESWAR MARWARI 178 I.C. 572=

39 Cr.L.J. 739=11 R.C. 127=42 C.W.N. 674=A.I.R. 1938 Cal 627.
—S. 504—*Offence under—Essentials—Intention—Delivery to agent of insulting photo of principal—*

subsequently shown to the person delivery of the insulting photo of and hence no offence is committed. Code. (*James, J.*) GAURISHA SINGH. 19 Pat.L.T. 892=39 Cr.L.J. 980(1)=

177 I.O. 896(2)=5 B.R. 40=1938 F.W.N. 812
PENSIONS ACT (XXIII OF 1871), S. 6—*Jagir not transferable—Certificate by Deputy Commissioner—If ultra vires—Pension Ruler, Rr. 8 and 9.*

The Deputy Commissioner is competent to grant a certificate under S. 6 of the Pensions Act only when the claim relates to a pension or grant which is by law, or under the terms of the grant, transferable. If a Jagir has been notified under the Punjab Descent of Jagirs Act and the rule of primogeniture applies thereto, it can not be said that the same is transferable. The grant of a certificate in respect of a Jagir of this kind is, therefore *ultra vires*. (*Dobson, F.C.*) RAJENDAR CHAND v. KESRI CHAND. 17 L.L.T. 17

PETROLEUM ACT (1899), S. 15 (c)—*Master, if liable under, for acts of servant.*
Where the servant in breach of the conditions of the license of his master, delivered petrol to another not

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having a license to transport petrol, the master is liable for the action of his servant in breach of the conditions of the license. (*Weston, J.*) EMPEROR v. AMBA LAL. 1937 A.M.L.J. 138.

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(See C. P. CODE, OR. 6, 7 AND 8).

—*Abandonment—Abandonment by party not concerned with right—Binding force of.*

In a suit by the zamindar questioning the right of the Government to resume certain village service inams and in the lands so resumed by the Government gave up the right as before the trial began and the those lands in e lands were personal to the session.

those lands in e lands were personal to the session.

by the Govt question so of the lands persons and the Govern- had no right me in such a ns concerned decision on orwill, J.J.) RAO v. SEC- 38 Mad. 446.

—*Amendment—Addition of parties—Powers of Court—Suit by nearest Hindu reversioners—Legislation pending suit making plaintiffs remote reversioners—Application for amendment by impleading nearest reversioners under new legislation—Dismissal of application and of suit—Propriety—Proper procedure.*

There can be no doubt that in the interests of justice Courts have ample power to allow amendments of plaints and to allow fresh parties to be joined when that becomes necessary. Where a suit instituted properly by the nearest reversioners to the estate of a last Hindu male owner

time, might not be available for the heir when the succession actually opens, the ends of justice would be best served by permitting the plaintiffs to amend their plaint and make the persons who have become the nearest reversioners party defendants and to prosecute the suit. (*Pandrang Row and Venkataramana Rao, JJ.*) VEERAYYA v. SUBBAMMA. 175 I.R. 575=

10 R.M. 799(2)=1937 M.W.N. 1175=A.I.R. 1938 Pat. 178.

—*Amendment—Court holding suit not cognizable by it—Amendment bringing suit within jurisdiction of Court—Refusal on ground that Court not competent to allow a suit not within jurisdiction—Propriety.*

It may be technically correct that a Court which has no jurisdiction to entertain a suit is not competent to allow an amendment of the plaint which, if granted, would bring the suit within its jurisdiction; but such a view is of no practical importance in a case where the amended plaint would be within the jurisdiction of the

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Court, for it is open to the plaintiff to amend his plaint as soon as it is returned to him and then re-present it in the same Court which would then be bound to entertain it. (*Niamatullah and Haris, J.J.*)

PANDEY v. RAN CHANDRA TEWARI.

11 B.R. (1938) All. 40.

1938 A.L.B. 197.

1937 A.L.J. 805—1937 E.D. 551—

1937 A.W.R. 819—A.I.R. 1938 All. 17.

Amendment—Powers of Court—Amendment setting up new and inconsistent case, and introducing cause of action already barred by time—Permissibility.

A party is not competent to place an alternative case which is not consistent with the case set up originally by him and that too at a very late stage of the case. An amendment specific legal plaint or cause of act not be permitted.

IVENGAR v. HADAKRISHNA (HETTY).

(1938) M.W.N. 542—A.I.R. 1938 Mad. 669.

Amendment—Powers of Court—Effect of amendment on limitation.

The circumstances that an amendment of the plain may have the effect of depriving the defendant of the benefit of the plea of limitation is one of the circum-

stances which may be taken into consideration by the Court in deciding whether to allow the amendment or not.

The amendment is allowed, and the amendment dates back to the presentation of the plaint, and if that date is within the period of limitation prescribed for the particular relief which the plaintiff seeks by his amendment the suit must be held to be within time. (*Agarwala and Rowland, J.J.*) KESHO DAS v. HARI KISHUN DAS.

17 Pat 268—1938 P.W.N. 431—175 I.C. 354—19 Pat L.T. 579—4 B.R. 580—10 R.P. 620—A.I.R. 1938 Pat. 205.

Amendment—Suit for declaration of title to immovable properties—Plaintiff also claiming as sub mortgagee—Amendment to insert prayer for sale on mortgage in a sale found not to confer title—If one selling up new case—Prayer for sale—If inconsistent with prayer for declaration of title.

Plaintiff who claimed certain properties under a sale and also as a sub mortgagee filed a suit claiming a declaration that he was the full owner of the plaintiff properties. He also asserted his rights as sub mortgagee and the rights of his mortgagee as against the defendant and he prayed the Court to give directions in respect of the working out of the relative rights of the respective parties in case the Court should hold that the defendant who claimed a charge had any right to redeem.

Plaintiff afterwards applied for an amendment of this plaint by inserting that if the Court not pass any title, decree for sale, wards contended.

tainable.

Held, that the suit as originally filed included an alternative claim based on the plaintiff's mortgage right, that even without the amendment it was open to the Court to treat it in the alternative as a suit for sale and that if it was not prayed for in the plaint the Court could grant the relief which was not inconsistent with the facts of the case when the defendants were not at any

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disadvantage in the course of the trial by reason of the defect in the pleadings, and that suit was maintainable.

Held further, that by the amendment the plaintiff asking for a relief (*Madhavan Nair*)

HETTIAR v. SHRI

1938 M.W.N. 785—48 L.W. 292—

A.I.R. 1938 Mad. 865—(1938) 2 M.L.J. 534.

Assertion made in pleadings about caste of parties not traversed—Effect—Right to challenge assertion in second appeal at late stage.

Where an assertion is made in the pleadings by a party to the effect that the parties are members of a family of Maharashtra Brahmins, and the opposite party

is not a member of that family, the assertion is not a statement of fact, but a statement of law, and it is not open to the opposite party to challenge it in a second appeal.

I.L.R. 1938 Nag. 469—177 I.C. 860—1938 N.L.J. 24—A.I.R. 1938 Nag. 163.

Construction—Useful pleadings.

Construction—Useful pleadings.

Construction—Useful pleadings.

Construction—Useful pleadings.

Construction—Useful pleadings.

Construction—Useful pleadings.

Construction—Useful pleadings.

Construction—Useful pleadings.

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Construction—Useful pleadings.

PLEADINGS.

than to substance. The object of pleading is to give fair notice to each party of what his opponent's case is, and if all the documents are from the beginning before the Court there is no question of the defendants being prejudiced by the form of the plaint. (*Sir George Lowndes*.) **KARAM CHAND v. MIAN MIR AHMAD AZIZ AHMAD.** 1938 A.L.J. 288=

1938 O.W.N. 325=32 S.L.R. 462=173 I.C. 736=1938 A.W.R. (P.C.) 99=1938 O.A. 336=1938 A.L.R. 232=1938 O.L.R. 166=47 L.W. 601=1938 M.W.N. 493=10 R.P.M. 241=4 B.R. 440=1938 P.W.N. 411=42 C.W.N. 989=40 Bom.L.R. 1053=A.I.R. 1938 P.C. 121 (P.C.).

—Duty of Court—Illegality not pleaded—Taking notice of.

Per *Stone C. J.*, and *Vicson Bosc, J.* A Court can, and must, take notice of an illegality which emerges in the course of a case although not pleaded. But a court should be very slow to do so and should not go out of its

177 I.C. 6=11 B.N. 109= A.I.R. 1938 Nag. 335 (F.B.).

—Fraud—Transaction impeached as 'fraudulent' and bogus—Necessity to keep two distinct. See C.P. CODE, O. 6, R. 4 PLEADINGS 1938 N.L.J. 279.

—Issue raised and decided in suit—Appeal—Right of party to abandon that issue and to ask the Court to leave it out of consideration. See **BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, S. 25.**

19 P.L.T. 328 (S.B.).

—Issues—Fraud—To be averred.

Pleadings and issues on the influence, coercion, etc. should definite allegations, because of separate categories in law. **TULSIRAM KHIRCHAND v. SAO.**

—New case not set up in pleadings—If can be considered. See **HINDU LAW—DEBTS** 18 Pat.L.T. 810

—Powers of Court—Greater relief asked for and the smaller included in it, not mentioned—Power of Court to grant the smaller relief.

Where though the smaller right included in a bigger right claimed is not specifically mentioned in the pleadings, Courts are competent to grant a relief less than that claimed. (*Amond, J.C.*) **RAM CHAND LACHMAN DASS v. ISHAR SINGH** 173 I.C. 813=

10 B. Pesh. 57=A.I.R. 1938 Pesh. 81

—Powers of Court—Setting up new case for plaintiff.

A Court has no jurisdiction to set up a new case on behalf of a plaintiff (*Darling, S.M. and Mehta, J.M.*) **SHARAFAT ULLAH v. NOOR MOHAMMAD.**

1938 R.D. 746=1938 A.W.R. (B.R.) 358=1938 A.L.J. (Supp.) 126

—Suit for ejectment and suit for recovery of possession—Nature of pleadings

In a suit for ejectment all that the plaintiff has got to do is to prove that the defendant has allotted to him as lessee or licensee of certain land, that he is the owner of the land in question and that the lease or license has been properly determined or otherwise put an end to. In a suit for recovery of possession, the plaintiff has got to prove that he has a good title to the land and that the suit is not barred by limitation in any way. (*Baguley,*

POLICE ACT (1861), S. 32.

f) **AH PO v. MAUNG PAN.** 177 I.C. 168=11 B.R. 141=A.I.R. 1938 Rang. 124.

—Suit for money advanced under hand note—Reference to loan and prayer for recovery of same—Absence of express alternative claim in basis of loan—Right to decree on loan.

Where a person distinctly set out in his plaint that the debtor had borrowed money from him and it is to recover that money that the suit is instituted although he does not alternatively make a claim that he is entitled to recover the money as well on the original loan as on the basis of the handnote, that is not fatal to the suit, as all the facts necessary to a claim on the loan are alleged and proved. (*Agarwala and Rowland, J.J.*) **KESHO DAS v. HARI KISHUN DAS.** 17 Pat. 220=4 B.R. 580=1938 P.W.N. 431=175 I.C. 554=10 R.P. 620=19 Pat.L.T. 578=A.I.R. 1938 Pat. 205.

—See CONTRACT ACT, Ss 172 to 178.

PLEDGING OF CHILDREN'S LABOUR ACT (1933) S. 2—Applicability—Labour pledged to be expended after child becomes 15 years old.

Where the labour pledged is not to be expended till after the time by which the child becomes 15 years of age, the agreement is not one to pledge the labour of a child under 15. (*Roberts, C.J. and Dunkley, J.*) **DAW NYUN v. MANG NYI PU.** A.I.R. 1938 Rang. 359.

POLICE ACT (V OF 1861), S. 7—Appointment of Sub-Inspectors—Power conferred on designated officers—Government, if can delegate disciplinary powers to them—Burma Police Department Notification 44 of 1937—If ultra vires—Prosecution of Sub-Inspector—Precarious sanction of Government—If necessary—Cf. P. CODE, S. 197 (1)

S. 7 of the Police Act confers the powers of appointment (which confer punishment), on certain designated

persons. Consequently, Police Department Notification No. 44 of 1937 in so far as it does not leave the power of punishment of Sub-Inspectors to the authority by whom the appointment was made but purports to delegate to certain specified authorities the power of punishment including dismissal, is ultra vires of the Local Government. Where, therefore, a Sub-Inspector of Police who was appointed by the Deputy Inspector-General of Police is prosecuted for an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, the previous sanction of the Local Government is not required under S. 197 (1), Cr. P. Code, for his prosecution, although Notification No. 44 of 1937 delegates the power of punishment of Sub-Inspectors to the District Superintendent of Police and constitutes the Deputy Inspector-General of Police as the appellate authority. (*Moyle, J.*) **TUN YA v. THE KING** (1938) Rang. L.B. 104=175 I.C. 442=10 B.R. 505 (2)=39 Cr.L.J. 614=A.I.R. 1938 Rang. 181.

—S. 32—License given to take out procession—Procession led by accused not license—Accused disobeying order of magistrate—Liability to conviction.

A license was given to certain persons under S. 30, Police Act, to take out a procession. The procession was led by the accused who was not one of the licensees. Order had been given by the Additional District Magistrate to the procession to move faster while passing a mosque. The order met with deliberate disobedience by

POLICE REGULATIONS.

and was convicted, no reference being made about the licence.

Held.
S. 32,
and even
the licence
order.

Memor. J) **BILAS RAJ v. EMPEROR.**

I.L.R. 1938 Lah 258=175 I.C. 509=10 R. 730=
39 Cr.L.J.

POLICE REGULATIONS—I

See CR. P. CODE—POLICE REG

1938 A.W.R. (H.O.) 471=A.I.R. 1938 All 531

POSSESSION.

See also (1) ADVERSE POSSESSION

(2) CO-SHAREERS.

(3) EJECTMENT

(4) LIMITATION ACTS: ART. 142 AND

In those cases the question is independent of such factors as length of time, the presence of recitals, or the

Person with title to major portion—If was entitled.

tain a suit to recover the whole land from the trespasser
(*York. J*) **JAFAR ALI KHAN v. QAMAKUNNISIA**
174 I.C. 378=1938 B.D. 499=1938 O.L.R. 182=
1938 A.W.R. (C.O.) 49=10 R. 251=
1938 O.W.N. 454=1938 O.A. 346=
A.I.R. 1938 Oudh 119

Suit for, based on title—Compensation for improvements bona fide made by defendant—can claim in defence

It is a settled principle that where the plaintiff has the legal title sues to recover possession of land the defendant, the Court will not allow the plaintiff to recover except on terms of allowing the defendant sums of money which he had spent on improvements, if the circumstances of the case favour the defendant's favour (*M.C. Ghose and Mitter, JJ*)
MAJDOODIN V. LUNGLA SYLHET TEA CO

42 O.W.N. 110
POST OFFICE ACT (VI OF 1898), § 52—Ingredients of offence—Extraction of contents from parcel

It is a necessary ingredient of the offence under S. 52 of the Post Office Act that some contents should be extracted from a parcel and not merely examined
(*Horwill, J*) **SATTAR KHAN v. EMPEROR.**
1938 M.W.N. 962.

POWER-OF-ATTORNEY.

ATION ACT, SS. 32 AND 33.

A.I.R. 1938 Lah. 200.

suretyship bond, mortgage or any other documents

authority to take the steps necessary to reduce an agreement, of which the principal had approved personally, to legal or formal shape, (ii) that it was not beyond the scope of the agent's power to enter into a Contract of suretyship whereby his principal became surety for himself, and that the principal could not repudiate such a

ed to have acted
other documents
limit the words
ough to give the
on the princ
NDRA NATH v.
177 I.C. 715=
2 O.W.N. 718=
1938 Cal. 573.

Construction—Power to surrender shares—If includes power to refuse newly issued shares

be construed strictly, and
reputed in the light of the
y include incidental powers
the authority Where an

was entitled.

acted beyond the scope of his
"surrender shares" were not
shareholder to take up newly
(*del. J*) **EZEKIEL v. CAREW**
I.L.R. (1938) Cal 190=
A.I.R. 1938 Cal 423.

Construction—Rules of—Young girl executing power of attorney in favour of step-mother—Authority given to manage and also to sell and mortgage property—Authority to sell, if unqualified

A power-of-attorney must be construed as giving only

for the proper
here the plaintiff,
cuted a power-of-
authorising her to
manage her land, to realise rents and also to sell and mortgage the property.

Held that the power-of attorney was really given for management of the property of the plaintiff as she was married and was not in a position to look after the land and that there was no intention to give any general power to sell the land and that the step-mother was only authorised to sell the property when it was necessary for the purpose of the management, (*Bhude, J*) **MST. JAN V. MST. FAJJAN.** 40 I.L.R. 69=A.I.R. 1938 Lah.

POWER-OF-ATTOENBY.

—Termination—Principal just before leaving India empowering agent to act during his absence—Subsequent return and again leaving India—Agent's power to act.

Where
ed a pone
his absenc
India and
before so leaving:

Held, that the power of the agent did not terminate and the agent had power to act for the principal during his absence (*Panchridge, J.*) **EZEKIEL v. CAREW & CO. LTD.** 1 L.R. (1938) 2 Cal. 190 = A.I.R. 1938 Cal. 423.

—Validity—Conditions—Execution and cation See REGISTRATION ACT, S. 33.

1938 A.

—What is—Deed by Hindu reversioners in favour of stranger—Authority given to latter to file suit for recovery of estate on behalf of all and provisions made for division of estate after recovery by suit—Effect of. See CONTRACT ACT, Ss. 201 AND 202

(1938) M.W.N. 259.

PRACTICE

Adjournment

Appeal.

Appellate Court.

Commissioners.

Consolidation of Suits.

Duty of Court.

Evidence.

Full Bench Reference.

Issues.

Judgment.

Judicial notice.

Leave to defend.

Leave to sue.

New plea.

Parties.

Pleadings.

See Title—Pleadings.

Privy Council.

See Privy Council.

Procedure.

—Adjournment—Adjournment to produce witness

—Discretion of Court.

Where the Court refused to grant a further adjourn-

not be found and when he was undoubtedly an important witness,

to grant an
the witness
(*Shadi, J.*)
1 L.R. 763 =

—Adjournment—Appellant's
taken prior clear.

Where the law is clear and the appeal argued, the fact that it to appear on the ground of illness is no reason for adjournment of the appeal to another date merely to swell the costs. (*Bomford, J.M.*) **MAHADEO MALLAH v. RAM DAS MALLAH.** 1938 B.D. 123 = 1938 A.W.R. 84 (B.R.).

—Adjournment—Peremptory date for hearing—Fixing of—Duty of Court.

Per *Nasim Ali J.*—It is desirable that before fixing a peremptory date for the hearing of a suit the Court

PRACTICE—Appeal.

should hear the parties in order to enable the parties to inform the Court what time should be necessary for enabling them to be ready with their evidence. The peremptory date without informing them through orally further the ends of *Nasim Ali, J.J.*) **KAZI-**

—MADRASALI MOLLAS.

67 C.L.J. 516 = A.I.R. 1938 Cal. 789.

—Appeal—Appreciation of evidence by trial Judge

—Interference.

An appellate Court must attach due weight to the appreciation of the evidence by the trial judge who has had the advantage of seeing the witnesses. But when

GOUDA. 176 I.C. 187 = 11 R.B. 26 =

40 Bom.L.R. 132 = A.I.R. 1938 Bom 304.

—Appeal—Copy of lower Court's order not produced along with appeal memorandum—Procedure—

Power of appellate to Court grant time for production

—Failure to produce within time granted—Dismissal of appeal—Propriety—Subsequent production—Sufficiency—Power of Court, to admit appeal to hearing.

Although a memorandum of appeal is incomplete for

the period of grace or to pass an order to the effect that the appeal is not admitted as being incomplete. It is not necessary that the appeal should be dismissed on that ground. If the required copy is subsequently produced, it will be open to the appellate Court to admit the appeal to hearing if the appellant satisfies the Court that the appeal is in time or to pass any other order which may appear suitable. (*Darling, S.M. and Bomford, J.M.*) **RAM BABU v. SHYAM SUNDER.** 1938 B.D. 78 = 1938 A.W.R. 63 (B.R.).

—Appeal—Discretion of lower Court—Wrong exercise of—Interference. See LIMITATION ACT, S. 5.

19 P.L.T. 309.

—Appeal—Discretion of trial Court—Interference—*ib.* O. 9, R. 9.

40 Bom.L.R. 238.

of trial Court—Dismissal of

Commissioner's fee—Inter-

ference in appeal—If justified. See CR. CODE, O. 17,

R. 3. A.I.R. 1938 Sind 142.

—Appeal—Document translated—Duty of High

Court to rely on translation on record.

The High Court in appeal when considering a docu-

ment which has been translated must rely on the

ded for the Court of the Commissioner—Procedure—Commissioner, if can dismiss without notice for deficiency of Court-fee.

If it is only as a matter of convenience that Collector are authorised to receive appeals which are intended to the Courts of Commissioner. The Commissioner could not dismiss the appeal without giving notice to the counsel to make good the deficiency in Court-fee. (*Darling, S.M. and Marsh, J.M.*) **RAM CHARAN.**

PRACTICE.

SINGH v. BHAGWAN DAS.

1938 A.W.R. (B.R.) 237 (2) = 1938 B.D. 660.

Appeal—Findings of fact—Decisions of Township Judges—Interference.

Per Baguley, J.—In England, or by the proceedings prescribed over by metes and bounds, who have had years of experience before they are appointed, have got to be dealt with on different lines from findings of fact arrived at perhaps by the Township Judges in Burma who may be appointed almost direct from the University. These Judges have not always the experience nor perhaps the ability of County Court Judges or High Court Judges, and their decisions on points of fact or the credibility of evidence can never be regarded as having the same weight as findings of the County Court Judges or High Court Judges. A.I.R. 1936 Rang. 5, Expl. (*Baguley and Sharfe, JJ.*) MOHAMMAD HAJEE v. VEDNATH SINGH 1938 Rang. L.R. 52 = 10 R.R.

Appeal—New case, means Permissibility

A plaintiff cannot be allowed to make out a new case in appeal entirely different from and inconsistent with that of his own case in the plaint. Not allowed to adopt the case of the defence wholly, and on that basis ask for reliefs those claimed in the plaint. Such a unfair to the opposite party as well as against law. (*Itasooden and Thakor, JJ.*) KRISHNAJI v. KESHAV 59 Bom. L.R. 1318

Appeal—New plea—Application for declaration of rent under Agra Tenancy Act—Denial of relationship of tenant not raised in trial Court—Plea in appeal—If open See AGRA TENANCY ACT, S. 123 (c)

1938 B.D. 96

Appeal—New plea—Exception—If can be raised.

second appeal. (*Bhadr, J.*) ABDULLAH SHAH v. MAHOMED YAKUB 178 I.C. 436 = 40 P.L.R. 848 = A.I.R. 1938 Lah. 558

Appeal—New plea—If can be raised

A plea which has not been raised in the pleadings should not be permitted to be raised in Appeal for the first time so as to enable the appellant to start a new case and take the respondent by surprise. (*Abdul Ghas and Singaravelu Mudaliar, JJ.*) CHINAMMA NANJUNDA 16 Mys. L.J. 184 43 Mys. H.C.R. 10.

Appeal—New plea—Letters Patent appeal—Trial Court issuing second commission for local investigation—Plea that first Commissioner's report should be wiped off the record—If open for 1st time in Letters Patent appeal

A contention that the Court issuing a second commission for a local investigation, should wipe out the first commissioner's report off the record and treat it as not evidence, is really not open and should not be raised for the first time in Letters Patent Appeal, as a matter of practice, when it was not raised in the Courts below. (*Courtney Terrell, C.J. and Manohar Lal, J.*) SHIB CHARAN SAHU v. SARDA PRASAD 172 I.C. 751 = 4 B.R. 165 = 10 R.P. 341 = 18 Pat. L.T. 837 = 1937 P.W.N. 862 = A.I.R. 1937 Pat. 670.

Appeal—New plea—Letters Patent Appeal.

Y. D. 1938—72

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When a question of law is raised for the first time in a Court of last resort, upon the construction of a document, or upon facts either admitted or proved

nice questions of fact, in considering which the Court of ultimate review is placed in a much less advantageous position than the Courts below. But that course ought not, in any case, to be followed, unless the Court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts, if fully investigated, would have supported the new plea. In a suit for declaration that the charge created by the guardian *ad item* of the minors to secure postponement of the decretal amount in favour of the decree-holder was null and void against the plaintiff, the case set up was one of collusion and fraud. The matter up to

sion and fraud. In the Letters Patent Appeal the plaintiff wanted to question the guardian's power to execute

the security which the enable the other, the

plaintiff could not be allowed to raise it. (*Mya Bu and Sharfe, JJ.*) A.R.M.N.A. CHETTYAR v. R.M.V. S. CHETTYAR. 1938 Rang. L.R. 256 = 177 I.O. 573 = 11 B.R. 143 = A.I.R. 1938 Rang. 286.

Appeal—New—Plea based under S. 43, T.P. Act, not raised in trial Court—If open in appeal

It is not necessary for a party to plead law, and a new point of law, as for example, S. 43, Transfer of Property Act can be raised in appeal though not raised (*Barler and Macklin, JJ.*) VITHA-

I.L.R. 1938 Bom. 155 =

3 = 10 B.R. 524 = 40 Bom. L.R. 147 =

A.I.R. 1938 Bom. 228.

Appeal—New plea—Objection as to frame of suit

Where a suit is brought under O. 21, R. 63 by a defeated claimant to declare his right to attach certain property after setting aside a transfer as having been made with a view to defeat creditors and no objection to the frame of suit (i.e.) as not being of a representative character, had been raised in the trial Court, but which

ich an Court. PRA 148 =

1937 O.W.N. 1169 = A.I.R. 1938 Oudh. 33

*Appeal—New plea of *marx ul-maut*—If open.*

The plea of *marx ul-maut* involves a question of fact and when taken for the first time in appeal, the other side is sure to be prejudiced and so ought not to be allowed to be raised at that stage. (*Niamatulla Ag.C. J. and Verma, J.*) TUFAIL AHMAD v. UMME KHA TOON 174 I.O. 465 = 1938 A.L.R. 287 = 10 R.A. 584 = 1938 A.W.R. 1 (H.C.) = 1938 A.L.J. 18 = A.I.R. 1938 All. 145.

Appeal—New plea—Plea as to maintainability of suit—Suit for injunction—Plea in appeal that plaintiff being out of possession cannot maintain suit—If can be raised

A plea that a suit for injunction is not maintainable on the ground that the plaintiff was out of possession on the date of filing the plaint, which was not raised in

PRACTICE.

the trial Court and which obviously depends on facts for which evidence would be necessary for the first time in appeal. (*Sir G. SECRETARY OF STATE v. KUCHIW STONE CO. LTD.* 173 I.C. 44.)

11 I.A. 45=17 Pat. 69=54=1 L.J. 410=42 W.N. 593=1938 A.L.J. 72=1938 A.W.R. (P.C.) 12=1938 P.W.N. 1=1938 O.L.R. 25=1938 A.L.R. 25=4 B.R. 198(2)=1938 M.W.N. 145=1938 O.W.N. 158=1938 R.D. 214=66 C.L.J. 485=10 R.F.C. 130=40 Bom. L.R. 292=1938 O.A. 281=11 Pat. L.T. 1001=A.I.R. 1938 P.C. 20 (P.C.)= (1938) 1 M.L.J. 209.

—Appeal—New plea—Point of construction of document or upon fact—Plea that stipulation in mortgage, clog on redemption—if can be raised in appeal.

Even when a question of law is raised for the first time in appeal upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea. A plea that a stipulation in a mortgage deed amounts to a clog on the equity of redemption may be allowed for the first time

1938 A.I.R. 1938 Mad. 465.

—Appeal—New plea—Point of law requiring the taking of fresh evidence and necessitating remand—

t, though for the of fresh

DAN.

177 I.C. 461=11 1938 M.W.N. 523=A.I.R. 193

—Appeal—New point—Plea that mortgage being lagan gahan no decree for sale is permissible—Permis-

has proceeded there on the basis that it was a type which enables either a decree foreclosure being passed.

Quere—Whether a lagan gahan mortgage comes within the definition of a mortgage by conditional sale. (*Stone, C.J. and Digby, J.*) BHAGWANTRAO v. DAMODAR. I.L.R. 1938 Nag. 91=20 N.L.J. 285=A.I.R. 1938 Nag. 112

—Appeal—New point—Point not raised as issue or investigated by trial Court and on which no evidence is adduced—if can be raised in appeal.

A point which has not been investigated by the trial Court and upon which the parties did not go into any

PRACTICE.

issue and did not lead any evidence from which any safe

DHARY v. C. G. ATKINS.

175 I.C. 279=4 B.R. 565=10 R.P. 597=1938 P.W.N. 177=19 Pat. L.T. 95=A.I.R. 1938 Pat. 189.

—Appeal—Right of withdrawal—Permission to withdraw—Power of Court to grant. See C.P. CODE, S. 107 AND O. 23, R. 1. 40 Bom. L.R. 895.

—Appellate Court—Interference—Credibility of witnesses—Opinion of Judge sitting on original suit of High Court

record the demeanour of the witness (*Mysa Bu and Sharpe, J.J.*) RORKE v. RORKE. 177 I.C. 312=11 B.R. 114=A.I.R. 1938 Bang. 248.

—Appellate Court—Interference—Credibility of witnesses—Opinion of trial Court.

Where the Court below has had the advantage of noticing the demeanour of witnesses and has given reasons for rejecting their testimony, the appellate court disagrees with the Judge of the estimate of the evidence of the and Ismail, J.J.) GOPI NATH v.

CHAMALI. I.L.R. 1938 All. 741=1938 A.W.R. (H.C.) 517=1938 A.L.J. 773=177 I.C. 815=1938 A.L.R. 781=11 B.A. 223=A.I.R. 1938 All. 504.

—Appellate Court—Interference—Discretion of trial Court.

It is a well established rule of law that in matters which lie within the discretion of the trial Court the

1938 O.A. 938.

—Appellate Court—Powers—Fresh period to make

sal must have jurisdiction nt for the trial Court to do. ordered that A should pay within a certain period on ld stand dismissed and B before that period dismissed A's suit the decision of the

the amount to B. (*Niyogi, J.*) MT ANUPA BAI v. BHAGWANT SINGH. I.L.R. 1938 Nag. 635=A.I.R. 1938 Nag. 470.

—Appellate Court—Powers—Interference—Appeal from final decree in partition suit—Nature and scope of Grounds of interference—Principles—If same at second appeal—Findings of fact—Finality.

A trial Court which makes a final decree in a partition suit considers the report submitted by the Commissioner—who has gone to the spot, heard the parties and

PRACTICE.

their evidence and has effected the partition having regard to the nature of the land and other circumstances—and reviews the facts and corrects the award of the Commissioner. The power to review the decision of the Commissioner on the facts is a matter for that Court and its view of the facts ought to be final as first appellate decision on fact. A first appeal to the High Court from the final decree in a partition suit is really in the nature of a second appeal in which only questions of law and principle can be considered, and the High Court can only interfere when it is shown that the trial Court in its decision has gone wrong on some question of principle in making the final allotment and in drawing up the decree. (*Courtney Terrell, C.J. and S. C. Chatterjee, J.*) JUGHESWAR SINGH v. RIJHAN SINGH. 17 Pat. 81—174 I.C. 147—4 B.R. 533—10 B.P. 483—11 Pat. L.T. 992—A.I.R. 1938 Pat. 104

such surrounding facts as make it impossible to accept the finding of the Judge (*Lord Wright*) HUKUM CHAND NARUPCHAND v. HANSRAJ HARJI 174 I.C. 875—1938 O.L.R. 273—10 B.P.C. 300—4 B.R. 599—1938 A.L.R. 407—(1938) 2 M.L.J. 966 (P.O.)

—Appellate Court—Recovery of deficit Court fee payable in lower Court—Desirability of early action

It is desirable that where the deal with the question of recover payable by the appellant in the matter should be dealt with a

OSMAN AHMAD 1938 O.W.N. 1138—1938 O.L.R. 499—1938 A.W.R. (C.C.) 131—1938 M.A. 917

—Application for probate—Letters of administration—If can be granted. See SUCCESSION ACT (XXXIX OF 1925). A.I.R. 1938 Lah. 349

—Commissions—Local investigation—Second Commission—Issue of—Grounds—Duty of Court

Where local investigation of a piece of land is essential and the report and map prepared by a commissioner are found by a Court unsatisfactory, the Court should issue a fresh commission. (*Agarwala and Chatterjee, J.J.*) DEB NARAIN KUNDU v. AMRITA LAL. 177 I.C. 156—4 B.R. 795—11 B.P. 132—A.I.R. 1938 Pat. 421

—Consolidation of suits—Parties belonging to same family—Dispute as to partition—Similarity in matters in issue—Consolidation—Refusal—Interference in revision

Where the parties to different suits are descendants of a common ancestor and the one question which related to all suits was the existence or otherwise of a partition, it is a fit case for consolidation. Where a lower Court refuses to consolidate in a proper case, it could set aside in revision. (*Varma, J.*) RAMAVTAR PRASAD VERMA v. SATDEO LAL. 177 I.C. 799—5 B.R. 21—11 B.P. 182 (2)

—Conversion of revision into appeal

A right of appeal is not an inherent right, and the circumstance that the statute by which a case is governed does not allow an appeal is no justification for allowing a revision application to be converted into an appeal. (*Weston*) MANGI LAL v. GOPI NATH. 1937 A.M.L.J. 107.

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—Discretion—Interference on appeal—If justified. The question of interest pendente lite and future interest is entirely within the discretion of the Court and Court of appeal will not interfere with the discretion exercised by the trial Court merely on the ground that reasons for the award or refusal to award such interest have been given. (*Manohar Lal and Chatterjee, J.J.*) HEMANGINI DEVI v. ANIL KISHNA. 1938 F.W.N. 186—19 P.L.T. 202—17 Pat. 350—A.I.R. 1938 Pat. 600.

—Duty of Court—Appealable cases—Duty of lower Courts to give findings on all important points.

The lower Courts in appealable cases should, as far as may be practicable, pronounce their opinion on all important points. Their failure to do not infrequently obliges the superior Courts to remand a case which may otherwise be fully settled on appeal. (*Uthair and Manohar Lal, J.J.*) NRISINGHA CHARAN NANDY v. TRIGUNANAND JHA. 17 Pat. 507—177 I.C. 664—4 B.R. 841—11 B.P. 161—1938 F.W.N. 818—19 P.L.T. 309—A.I.R. 1938 Pat. 413.

—Duty of Court—Duty to avoid appearance or imputation of bias—Judge's competency to decide case when he is debtor of one of the parties. See JUDICIAL OFFICERS—DUTY OF. 40 Bom L.R. 904.

—Duty of Court—Grant of relief on proof of facts stated—Rejection of application in limine—Propriety. A Court is bound to adjudicate upon the facts stated

in (*Courtney Terrell, C.J.*) MAHABIR KUSAI POKDAR v. 16 Pat. 724—172 I.L.J. 737—4 B.R. 161—10 B.P. 339—18 Pat. L.T. 839—1937 F.W.N. 865—A.I.R. 1937 Pat. 665.

—Duty of Court—Hearing of case at end of working hour after pleader has left Court—Propriety—Material irregularity.

Pending execution of a decree, the judgment-debtor filed an objection under S. 47 C.P.C., alleging that the decretal amount had been adjusted and only a portion of it was due. This objection was proceeded with and the inquiry was adjourned on several occasions. On some occasions the decree holder filed *hazri* showing that he was going to contest the alleged adjustment put forth by the judgment-debtor. Ultimately the objection was taken up for hearing on a certain date at about 4.30 p.m. which was usually the last hour for the Court to sit. At that time the pleader of the decree-holder had left the Court on the understanding that no new case would be taken up. The Court heard the objection *ex parte* and allowed it.

Held, that even if the pleader was not told by the Court that no new case would be taken up, he was justified in acting upon the supposition that no new case would be taken up at 4.30 p.m. The Court acted with material irregularity in hearing the objection *ex parte* at the end of the working hour of the Court.

Held further that as the decree holder had filed *hazri* on several occasions showing that he was going to contest the adjustment, mere failure to file *hazri* on a particular date did not show that he was in any way negligent. (*Mohamad Noor, J.*) SURAJMAL BADRI DAS v. MANBODH BHAGAT LALL CHAND RAM. 174 I.C. 1007—4 B.R. 501—10 B.P. 563—A.I.R. 1938 Pat. 204.

—English law—Importation—Matter governed by Indian statute.

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(Per *Niyogi, J.*) On a matter which is governed by the express provisions of statute law in force in India, it may be dangerous to import the considerations borrowed from English law. (S)

GOPALRAO v. DEVIDAS.

174 I.C. 148 = 10 B.N.

Evidence—Appraisal

The evidence on record has to be appreciated with reference to the pleas and previous statements and con-

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case issue on point—Necessity for.

Where the defendant alleges that the plaintiff has inflated his claim in the plaintiff in order to bring his suit

J.J. KHOMAL v. GOPALDAS.

175 I.C. 684 =

11 B.S. 5 = A.I.R. 1938 Sind 121.

Judgment—Holly contested suit—Duty of the

only arise, if a Court finds the evidence pro and con so

Bariley, J.J.) PRATUL CHANDRA BHADURI v. PURNA CHANDRA BHADURI 175 I.C. 610 = 10 B.C. 812 = 33 O.L.J. 324 = A.I.R. 1938 Cal 284

Evidence—Plea as to insanity of person giving evidence—When open

Where a plaintiff to a suit is adjudged to be sane at the date of the suit and he has not challenged that finding but continued the litigation as sane it is not open to him to argue that he is an alleged lunatic at the stage when evidence was to be given. (Puranik, J.) MST HAZRABI v. MST. FATMABI 177 I.C. 80 = 11 B.N. 103 = A.I.R. 1938 Nag. 204.

Evidence—Witness—Legal Practitioner as witness—Deniability.

A counsel is not incompetent to give evidence whether the facts to which he testifies occurred before or after his retainer. As a general practice it is undesirable

admitted

pos

MS

Court—Suit for possession of—Leave of Court—Necessity. See C. P. CODE, O. 40, R. 1.

19 Pat L.T. 35.

New case—Court's power to make out.

It is not within the judicial duties of a Judge to raise a case not raised by the party himself and to decide it for him. (Davis, J.C. and Mehra, J.) ARAB JHANGLU v. PANJAL SHAH. A.I.R. 1938 Sind 198.

New case in second appeal—No conceivable defence open to new case—Avoidance of multiplicity of proceedings.

ground of claim is
highly not conceivable
where multiplicity of
is avoided, the right
claim to be put for-

A.I.R. 1938 Lah. 204

Evidence—Witness not summoned—If ground

summoned is no

evidence is not

J.J. JOTI LAL

176 I.C. 129 =

4 B.R. 682 = 11 B.P. 51 = A.I.R. 1938 Pat 281.

Full Bench—Motion for reference—If can come from counsel.

The motion to refer a matter to a Full Bench should normally come from the Judges themselves and not from counsel when they find that they are fettered by a decision in a previous case which appears to them to require further consideration. When the authorities upon a proposition of law are plain and straightforward, it is not for counsel to argue, what is in effect a Bench to adopt the machinery laid down by which a Full Bench hearing can be obtained. (C.J. and Sharpe, J.) A.B. NEOGI v. B.B. NEOGI.

174 I.C. 188 = 10 B.R. 391 = A.I.R. 1938 Rang 43

Suit—Duty of Court to raise—Plea that plaintiff has inflated claim to file suit in higher Court—Spe-

New case—Second appeal—Suit by plaintiff in individual capacity—Conversion into representative suit—Permissibility.

A plaintiff who brings a suit as the sole proprietor of a certain village site cannot, in second appeal, be permitted to convert his suit into a representative one on behalf of the proprietary body. (Bhadr, J.) CHANDGI v. ADLI. 40 P.L.R. 630.

New plea—Objection of misjoinder raised for the first time at argument stage after adducing evi-

on suit—

le and ad-

necessary

Where a party to a suit does not raise the objection that he is not a necessary party to the suit at the earliest possible stage of the suit, he cannot be allowed to turn round, at a late stage of the suit after the evidence has

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been recorded and findings given, and get over the effects of the decision by pleading that he was not a necessary party to the suit. Nor the trial Court nor an appellate Court is justified in upholding such a plea. In a suit for redemption on a mortgage some defendants who were made parties as being in possession of some items of mortgaged property set up in statement paramount title to the property adverse possession, but they never raised the

on the question of title. In appeal the appellate Court without considering the merits of the case held that they were not necessary parties to the suit and dismissed the suit as against them.

Held, in second appeal, that the objection raised at such a late stage could not be entertained or considered and that the lower appellate Court erred in giving effect to the same. (*Nagarwara Iyer and Singaravelu Madaliar, J.J.*) GURUSANTHAPPA v YELLAPPA. 11 Mys. L.J. 1-42 Mys. H.C.B. 645.

—New plea—Plea not set up in pleadings—If can be allowed to be set up.

A party cannot be allowed to set up a plea in the pleadings and to sue for ejectment, the statement that he is the licensee which he has never pleaded, and claim immunity from ejectment on that ground. (*Mahomed Ismail, J.*) MAHOMED HASAN v BUDDHU. 172 I.C. 973-1038 A. 445-1938 A.L.R. 60-1937 A.W.R. 1085-1937 A.L.J. 1297-1938 A.W.R. (H.R.) 105-1938 R.D. 169

—New plea—Suit for arrears of rent by one only of several co-sharers—Plea that suit not maintainable—When to be raised. See AGRA TENANCY ACT. S. 256. 1938 A.W.R. (H.R.) 105-1938 R.D. 169

—Order as to security in Probate or administration matter—Discretion—Power of appellate Court to interfere. See SUCCESSION ACT (XXXIX OF 1925) S. 291. 174 I.C. 421-A.I.R. 1938 Rang. 67

—Parties—Partnership—Suit for dissolution and accounts—Necessary parties—Non joinder of all partners—Effect—Objection to maintainability of suit on ground of non joinder raised in written statement—Plaintiff not taking steps to implead all partners but contesting suit on issue of non joinder—Dismissal of suit—Propriety.

A plaintiff suing for dissolution and accounts of a partnership must implead all the partners as defendants. It may be that he is not aware of the number of partners at the time of filing the suit, if additional partner had been taken it without his knowledge, but when the defendants impleaded by him raise the plea of non maintainability of the suit on the ground of non joinder of all the partners he can ascertain the correct number and can implead the parties left over.

no such trouble, but contests the suit has only to thank himself if the result is that ground. It may not be necessary to implead the partners in a case where the liability of the defendants is joint as well as several. But where the liability is the liability of the individual partners and of the partnership, and not jointly of the various members constituting the partnership, no suit is maintainable without

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impleading all the partners. (*Horwilt, J.*) PARASURAMA IYER v. SUBBURAMACHARI. 175 I.C. 290-10 R.M. 761-1937 M.W.N. 1189-A.I.R. 1938 Mad. 151.

—Parties—Suit by defeated claimant to set aside decision of certificate officer—Officer who made the

11 R.P. 180.

—Parties—Transposition—Setting aside safeguarding of rights.

Where a respondent has been transposed as an appellant before the time for appeal has expired, it is inequitable to treat him, when the transposition is set aside and after he has allowed the time to appeal to pass, as a person against whom the decree has become final by reason of his not having appealed. (*Stone, C. J. and Purank, J.*) MULJI SICKAKA & CO v. NURMOHAMMAD. A.I.R. 1938 Nag. 377.

—Pleadings: See PLEADINGS.

—Privy Council. See PRIVY COUNCIL.

of ob-
issues
—PRO-
J. 337

—Probate Court—Equity by—Scope of. See WILL—PROBATE COURT. A.I.R. 1938 Rang. 251.

—Probate Court—Province of—Validity and effect of provisions will have to be determined in proceedings for the construction of the will. See WILL—PROBATE COURT. 66 C.L.J. 337

—Probate proceedings—Jurisdiction of Court to decide questions of title etc. See SUCCESSION ACT, S. 218. A.I.R. 1938 Nag. 173.

—Procedure—Change in—Pending proceedings—Effect on—New procedure—If to be followed.

The procedure to be followed in pending cases, when a new procedure is prescribed by law, should be according to the new procedure so far as it is applicable and not according to the old procedure. (*Mahomed Noor and Chatterji, J.J.*) VISHWANATH NARAYAN SINGH v. HARIHAR GIR. 178 I.C. 279-8 B.R. 78-19 Pat. L.T. 760-1938 P.W.N. 765.

—Procedure—Connected suits—Evidence in both treated together without consent of parties—Propriety.

A Court would be committing an error if it treats the evidence in two suits together, when the parties have not agreed to the evidence in one case being treated as evidence in the other and the suits have not been consolidated. (*Bhude, J.*) RATI RAM v. SHERA RAM. 40 P.L.R. 990.

—Procedure—Contentious proceedings—Summary disposal—If justified—Duty of Court to make full inquiry as in regular suit. See SUCCESSION ACT, S. 295. (1938) 2 M.L.J. 443.

application—Presentation court hours on last day of valid presentation. See A.I.R. 1938 Nag. 106.

—Procedure—Local inspection—Object and scope of—Judge making enquiries of people present as to rights of parties and basing decision thereon—Propriety of. See C.P. CODE, O. 18, R. 18. 48 L.W. 595 (1938) M.L.J.

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—*Procedure—Party bound to go into witness-box not doing so till late stage—Refusal by Court to allow him to go at late stage—Effect.*

Where a person should have been the first witness to go into the witness-box, but did not do so and desires to go into the witness-box at a late stage, and the Court in its discretion refuses to allow him at that stage, there is no irregularity in the procedure adopted. (*Dutt, J. C. and Shikha, J.*) **VIRANBAI v. PARMANAND JHANGALDAS.** A.L.B. 1938 Sind 208

—*Procedure Permanent Trust created by will—Removal of Trustee—Procedure under S. 92, C. P. Code See SUCCESSION ACT, S. 301.*

1938 A.L.J. 124 = 1938 A.W.R. 97 (H.C.)
—*Procedure—Question of jurisdiction—Decision as preliminary issue by Judge—Finality—Right of successor in office to re-open at later stage of suit—Proper stage for re-consideration. See C. P. CODE, O 14, R 2*

No.
—*“Nec”*
ask for cancellation of decree—Property—Proper Court—Duty of Court—Power to direct amendment of plaintiff necessitating payment of additional Court fee.

Petitioner filed a suit for a declaration that a certain decree was not binding on him and paid a Court fee of Rs. 471-7-0. The plaint was returned to him with an endorsement stating, *inter alia*, that since the plaintiff was a party to the decree ought to be declared not binding, the suit should be valued under S 7 (IV A) of the Court Fees Act, and the requisite Court fee paid. The plaint was re-presented with a statement that it was not necessary for the plaintiff to sue for cancellation or setting aside of the decree and that the Court fee paid already was sufficient. The Court after bearing arguments passed an order that the plaintiff should sue for cancellation of the decree, and subsequently the plaint was returned to the petitioner “for necessary amendments”, giving him 7 days time. There was no order by the Court rejecting the plaint for non payment of the defect Court fee.

Held, in revision, that the procedure adopted by the Court was not fair to the litigant, in that the order returning the plaint “for necessary amendments” compelled the party to accept the view of the Court as to the Court fee payable, if he did not so accept it he lost his right of appeal. The proper course was to require payment of defect Court-fee within a particular time, and, if such payment was not made, to reject the plaint, thus giving the plaintiff right to appeal against the order of rejection of the plaint. There is no rule that a plaintiff for setting aside any decree or order is liable to pay Court-fee in respect of the decree if Court-fee had been paid, it was the Court to insist on the plaintiff necessitating the payment of additional Court-fee. The Court’s power to direct amendment of plaints should not be exercised for the purpose of imposing a burden on this plaintiff which he is not willing to accept. (*Pandurang Rao, J.*) **KACHAPPA IN re.** 47 L.W. 523 = 178 I.C. 928 = 11 B.M. 196 = 1938 M.W.N. 453 = A.L.B. 1938 Mad. 645

—*Relief—Abandonment of claim—Inference—Claim to damages made in plaint and issue raised—Plaintiff adducing no evidence on question—Absence of material suggesting postponement of trial of such issue or agreement between parties to that effect—Inference—Power of appellate Court to award damages.*

Where a plaintiff claims damages in his plaint and an issue is raised on the point but the plaintiff adduces no

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evidence on the question of damage, and there is nothing in the record to suggest that the trial of the issue was postponed or that there was any agreement between the parties to that effect the proper inference to be drawn is that the claim for damages has been abandoned. An appellate Court cannot in such a case award any damage. (*Sir George Leander, J.*) **SECRETARY OF STATE v. KUCHIWAR LIME AND STONE CO., LTD.** 172 I.C. 443 = 47 L.W. 3 = 18 Pat.L.T. 1001 = 65 I.A. 45 = 47 Pat. 69 = 32 S.L.R. 276 = 42 C.W.N. 593 = 1938 A.L.J. 72 = 1938 A.W.R. (P.C.) 111 = 1938 P.W.N. 1 = 1938 O.L.R. 25 = 1938 A.L.B. 25 = 4 B.R. 198 (2) = 1938 M.W.N. 145 = 1938 M.W.N. 158 = 1938 B.D. 214 = 66 L.J. 485 = 10 B.P.C. 150 = 40 Bom L.R. 292 = 1938 O.A. 251 = A.L.B. 1938 P.C. 20 = (1938) 1 M.L.J. 269 (P.C.)

—*Relief—Claim made not proved—Right to relief*

respect of property found to have been dedicated for the use of the whole Brahmin community as such of the place and not for the use of the plaintiffs alone, alleging that the property belonged to the plaintiffs alone and was dedicated for their exclusive use.

Held, that the Court was not precluded from granting the relief which they were entitled to get as members of the Vadagalai community though their title as claimed in the plaint was denied and negatived. (*Venkataramana Rao, J.*) **T. P. RENGIA IVENGAR v. KAVANUJA JEEER SWAMIGAL.** A.L.B. 1938 Mad. 270.

—*Relief—Defendant cutting earth from the tank-bank in plaintiff’s tenure—Suit for possession on ground of dispossession—Competency—Proper remedy.*

Where in a suit for possession of a tabadari tenure, the dispossession alleged against the defendant is that he cut earth from the bank of a tank which is the subject-matter of the tenure, that does not give rise to an action for possession but merely to an action in trespass against the defendant in which the plaintiff can recover damages and in which the question of title can be gone into. To have a decree for possession is not an appropriate remedy. (*Wort, J.*) **NARAIN SINGH v. BAIKUNTH SINGH.** 174 I.C. 163 = 4 B.R. 388 = 10 B.P. 486 = 1938 P.W.N. 558 = 19 Pat.L.T. 246 = A.L.B. 1938 Pat. 375.

—*Relief—Plaintiff not proving facts constituting his cause of action—Decree on proof of different set of facts—Permissibility.*

all the same on proof of a different set of facts which the defendant had no opportunity to controvert, and which did not form the subject-matter of any issue in the trial Court. The plaintiffs came to Court for a perpetual injunction to the effect that the defendant had no right to build on the land in dispute on the sole ground that the land in dispute had been reserved for public purposes, and that by taking possession of this land the defendant was depriving them of the use of land on the occasions of marriages and deaths. This fact was denied by the defendant, and it was stated that another piece of land had been reserved for common purposes for use on the occasions of marriages and deaths. The defendant produced evidence to show that another piece of land

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had been reserved for use for public purposes. The land was found to be part of shamlat abadi and the plaintiffs were granted the injunction.

the condition of the joint property without the consent of all the co-sharers it would have been open to the defendant to plead that there was a custom in the village allowing a proprietor to make exclusive use of a part of the shamlat abadi land so long as the area of land appropriated by him did not exceed the area that would fall to his share on partition. As the only ground

the case and the plaintiffs' suit for injunction should be dismissed (*Coldstream, Monroe and Abdul Rashid, J.J.*) **INDER SINGH v BHANA.**

175 I.C. 412-10 B.L. 710-
A.I.R. 1938 Lah. 296 (S.B.).

Relief—Possession—Suit for—Decree for joint possession—If father can be granted.

prayer does not necessarily involve the plaintiff being dismissed. A decree for joint possession nature as a decree for possession to lesser extent and there will be no decree other than the one asked for nature. In granting a decree for considerations such as the danger of proceedings have really nothing to do interests of the parties inter se. (*v. MAUNG PAN.*)

177 I.C.

Relief—Promissory note—Absence of name of payee or inadmissibility in evidence—Claim on original loan—Right to decree.

A person is entitled to recover his claim on the original loan when the suit on the handnote fails either because the payee is not mentioned or because the handnote is not admissible in evidence, provided that a proper case has been made out in the plaint or the plaintiff has been amended to state the facts necessary in support of the claim. (*Agriwala and Rowland, J.J.*) **KESHO DAS v HARI KISHUN DAS.**

17 Pat. 258-
1938 P.W.N. 431-175 I.C. 354-
4 B.R. 580-10 R.P. 620-19 Pat. L.T.

A.I.R. 1938 Pat.

Relief—Suit on forged accounts—Decree admitted amount—Power to pass.

Where a suit is brought on the basis of a forged bahikhata, no decree can be passed even on the admitted sum due by the defendant (*Manohar Lal, J.*) **NAGINA RAI v**

173

Relief—Claim as heir of and sitting up mortgage—Cases of neither plaintiff nor defendant proved—Plaintiff found entitled to possession of suit land on different contentions—Decree for possession—If can be granted.

PRACTICE

In a suit for possession the plaintiff based his claim as the heir of the original owner and that he had leased the suit land to the defendant. The defendant denied the

Held, that the plaintiff should be given a decree for possession, and there was no need to refer the parties to another suit. (*Alouty, J.*) **MA PWA ZON v, MAUNG CHIT SAYA.**

177 I.C. 422 (1)-11 R.R. 125-
A.I.R. 1938 Rang. 213.

Set-off—Equitable set-off—Promissory note—Agreement between payee and maker—Payment by

Solicitor—Lien for costs. See LEGAL PRACTITIONER. 40 Bom L.R. 694.

Stay of proceedings—Commissioner completing enquiry into accounts before issue of Rule for stay—Subsequent submission of report—If without jurisdiction.

Where before a Rule was issued by the High Court of the enquiry into accounts, the Commissioner and there was his report, Rule issued by of jurisdiction) **KESHABJI LALJI v. PIRANALL GAVENKA.**

42 O.W.N. 405-
67 C.L.J. 521.

of proceedings—
Failure to appear

the stay order vacated and the parties are aware of the same, the date following to which the proceedings stand adjourned in the trial Court becomes effective and the parties are bound to appear before the trial Court on such date. If any of the parties fail to appear on such a date the Court will be justified in proceeding *ex parte* against such party (*Stone, C.J.* and *Puranik, J.*) **ABDUL RASHID ABDULLA KHAN v. MINHAZUL HASAN**

175 I.C. 897-11 R.N. 15-
A.I.R. 1938 Nag. 173.

Subsequent events—Relief on ground of—Right to—Suit by Hindu daughter in law against father in-

quired pro-
legal repre-
by death
DU LAW—

MAINTENANCE—DAUGHTER IN-LAW 48 L.W. 706.

Subsequent events—When can be taken notice by the Court

ed, the Court cannot but take notice of the altered circumstances and decline to give the relief to which a party would be entitled before the change of circumstances. (*Pandrang Row and Venkataramana Rao, J.J.*) **AN**

PRE-EMPTION.

—*Right of—Benami sale by*
having superior right—Effect of.

A right of pre-emption cannot be d
 by the vendee in a person having

PRESY. S. C. C. ACT (1882), S. 28.

ing, will which *syndicate* use and changing number with a status equal to that of the pre-emptor's at any time before the decision of the pre-emptor's suit, the pre-emptor has no preferential right at the time of the passing of the decree and his suit cannot succeed. The fact that the vendee acquires such status after more than one year from the date of the sale which the plaintiff seeks to pre-empt is immaterial 16 Lah 921 foll (*Coldstream and Din Muhammad, JJ*) JALLU V. SHAHU

11 L.R. (1938) Lah 93 = 40 P.L.R. 1035.

—*Right of—Vendee transferring property to person claiming equal or superior right—Effect.*

If before the institution of the suit, the original vendee transfers the property to a person claiming a right equal or superior to that of the pre-emptor, the pre-emptor cannot legally oust him. A pre-emptor in order to succeed in his claim must not only possess a superior right at the time of the sale but must retain the superiority on the basis of which he claims to pre-empt also at the stage of the suit and the stage of the decree (*Din Muhammad, J.*) HARBHAGWAN DAS V. PRATAP SINGH.

40 P.L.R. 97 = 177 L.C. 674 =
 11 B.L. 352 = A.I.R. 1938 Lah 242

—*Right to—Fictitious sale to defeat creditors—*
Plea in defence if open—Third party's rights not
affected—Estoppel, if any.

In a suit for pre-emption, it is perfectly open to the defendant's vendor and vendee to plead and prove, that the sale in question was only a fictitious one got up with a view to protect the property from the claims of certain creditors and as such it could not give rise to a claim for pre-emption. There can be no estoppel in such a case when the interest of no third person has intervened can the mere fact of the institution of a suit for pre-emption estop the vendor and vendee from pleading proving the real nature of the transaction (*Ahmad, J.*) DURGA SINGH V. GIRWAR DUTT

1938 A.L.J. 125 = 1938 A.W.R. (H.C.) 96 =
 174 I.C. 896 = 1938 A.L.R. 346 =
 10 E.A. 636 = A.I.R. 1938 All. 191

—*Suit for—Court determining market value of*
property—Forum of appeal.

If in a pre-emption suit the Court determines the

—*A transfer, nature of—Sale or exchange—Deter-*
mination as to—Tests to be applied—Fixing of value of
property transferred—Effect.

The difference between sale and exchange is that sale

ation or disposition of the property sold, can recover the price paid and damages, while in the case of an exchange, the person dispossessed has at his option a right for the return of the thing given by him, if it is available. The mere fact that the value of the property transferred has been fixed, does not convert the transaction into one of sale when it really is one of exchange. It is not the name or form of the transaction, but the nature of the consideration paid for the transfer which determines the nature of the transfer itself. If the consideration for the transfer is not paid in cash, but is paid by transfer of the ownership of some property, it would be only an exchange and not a sale (*Bennet, A. C. J. and Ganga Nath, J.*) RAM BADAN LAL V. KUNWAR SINGH

175 I.C. 618 = 10 B.A. 715 =

1938 A.L.R. 467 = 1938 A.L.J. 52 =

1938 A.W.R. (H.C.) 86 = A.I.R. 1938 All. 229.

—*Waiver of right—If amounts to—Waiver by*
manager of joint Hindu family—If operates as a
waiver by all.

When property is offered to a pre-emptor for sale before a definite contract of sale with any other person has come into existence, and such person has refused to purchase the property or intimated his intention of not

11 L.R. (1938) Lah 246 = 176 I.C. 925 =
 11 B.L. 247 = 40 P.L.R. 10 = A.I.R. 1938 Lah 273

PRESCRIPTION.

See (1) ADVERSE POSSESSION

(2) LIMITATION ACT, S. 28, ARTS. 162 AND 144

(3) EASEMENTS ACT, S. 15

—*Purchaser, a co-insurer—Plaintiff not having a preferen-*
tial right.

In a suit for pre-emption it is open to an ostensible vendee under the sale deed to plead and prove that he was only a mere benaminar for a co-sharer against whom the plaintiff has no preferential right of pre-emption and

(*Ahmad, J.*)
 19

mentioned in S. 6 of the Presidency Small Cause Courts Act, and apart from that section, it is doubtful whether the High Court was intended to have any power of judicial superintendence over the Presidency Small Cause Court (*Lort Williams, J.*) MAHOMED YUSUF V. ABDUL MAJID

11 L.R. (1938) Cal 162 =
 N. 602 = A.I.R. 1938 Cal 671.
 compensation—Power of High

PRESY. S. C. C. ACT (1882), S. 38.

Where the Small Cause Court in dismissing a suit has not awarded compensation to the defendant under S. 26 of the Presidency Small Cause Court, it would be wrong on principle for the High Court in revision to interfere and pass an order for compensation although in its opinion it is a fit case for awarding compensation. (*Ameer Ali, J.*) M. S. C. SAHEB IQBAL SINGH.

—S. 38—*Jurisdiction of Full Bench*
Power to interfere or order retrial—*amendment of plaint.*

The Full Bench of the Presidency Small Cause Court exercising its powers under S. 38 of the Presidency Small Cause Courts Act is not a Court of appeal and cannot therefore arrogate to itself the appellate Court. Its jurisdiction is merely nature, and it can only interfere when it

could have arrived at the conclusion to which judge has arrived. In no other circumstance Full Bench interferes with a finding of fact, retrial be ordered unless the trial has been

may necessitate a further re-hearing or reconsideration. It has no powers to order an amendment of the plaint, but it can order a retrial if an amendment setting up a new and inconsistent case is allowed by the trial Court. (*Abdur Rahman, J.*) DURAISWAMI IVENGAR v. RADHAKRISHNA CHETTY. (1938) M W N. 542 = A.I.R. 1938 Mad. 669.

—S. 38—*Scope—Order under O. 21, R. 2, C. P. Code.*

To fall within the scope of S. 38 an order must not

contention there should be nothing in the nature of an appeal against the order disposing of it. But it would be quite illogical to make the right to appeal against orders made in execution proceedings dependent upon whether the suit had been contested or uncontested. And, therefore the decision under S. 38 (*Panchridge,*

A.I.R. 1938 Cal. 862.
PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), S. 8—Aggrieved party—Official Assignee—Application for delivery of property and for committing to prison for contempt wife and son of insolvent—Refusal—Appeal. See **LETTERS PATENT (MADRAS), CL 15.**
48 L W. 462 = (1938) 2 M.L.J. 609

—S. 8 (2)—*Person aggrieved—Third person whose title to property is affected by adjudication—Right of appeal.*

PRESY. TOWNS INSOL. ACT (1909), S. 11.

A third person whose title to property is affected by an adjudication order is a person aggrieved by it and is entitled to appeal from it. But he is not entitled in any appeal under Cl. (2) of S. 8 to succeed on the basis merely of absence of notice by the Insolvency Court

when he had no means of knowing of the existence of the proceedings in which that order was passed against him. (*Datta, J. C. and Lobo, J.*) BHAWANIDAS v. JETHSING. 32 S L R 672 = 175 I C 214 =

vent under the Insolvency law is one of vital importance.

a Court within the of creating an act
ULAM HUSAIN v. I.R. 1938 Sind 220.

—Ss. 9 (e) and 11—*Construction—Foreigner carrying on business through agent in Bombay—Decree against—Attachment of property for not less than twenty one days in execution—Debtor not resident in Bombay during attachment—Jurisdiction of High Court to adjudicate insolvent*

The Court cannot treat a man as a debtor within the meaning of the Presidency Towns Insolvency Act unless he is either a subject of British India or has committed or suffered within British India an act of insolvency. A

ment, C. J.
PRATAPGIR

—S. 9 Expl—*Joint Hindu family firm—Act of insolvency by manager.*

Where members of a joint Hindu family carry on partnership business and if the elder member of the family who is also the managing partner of the firm makes a fraudulent transfer of the firm property to pay a debt due by the firm, the act of insolvency constituted by the transfer is an act of insolvency on the part of the other partners also as the managing partner is an agent within the meaning of Explanation to S. 9 (*Datta, J. C. and Lobo, J.*) BHAWANIDAS v. JETHSING. 32 S L R. 672 = 175 I C 214 = 10 R S 291 = A.I.R. 1938 Sind 82.

—S. 11 (b)—*Railway servant staying during week ends in rented room in Calcutta—If has dwelling-house in Calcutta.*

PRESY. TOWNS INSOL. ACT (1909), S. 12.

S. 12—*Petition by creditor—Existence of debt—Proof required.*

A creditor presenting an insolvency petition against a debtor must prove the existence of a debt of Rs. 500 or upwards not only at the time when the petition is presented, but at the time of the hearing of the petition and at the moment of time immediately prior to the making of an order of adjudication. (*Castello, A.C.J. and Edgley, J.*) AHMAD MAHOMED PARUK v. PRA PHULLA NATH TAGORE. I L R (1938) 1 Cal. 13

S. 13 (4) (b)—*"Sufficient cause"—Deposit, before adjudication, of amount of debt due to petitioning creditors.*

A deposit by the debtor before the date of adjudication of the whole of the amount of debt due to petitioning creditors is not a "sufficient cause" within the meaning of S. 13 (4) (b) so as to refuse an order of adjudication. (*Datta, J.C. and Lobo, J.*) BHAWANIDAS v. JETHISING. 32 S L R 672=175 I N 214=10 B S 231=A I R. 1938 Sind 82.

S. 17—*Applicability—Suit to enforce personal claim against insolvent—Leave of Court—N*

There is no warrant for holding that Presidency Towns Insolvency Act applies proceedings against the property of the insolvent also was therefore no leave of the Court is necessary for commencing a suit to enforce a personal remedy against an insolvent. There is no doubt a distinction between the language employed in the section on the one hand, and that employed in the corresponding sections of the English Bankruptcy Act and the Provincial Insolvency Act on the other, in that S. 17 of the former Act refers only to remedies against the property of the insolvent, while the latter Acts refer to remedy against the property or person of the debtor. But the latter portion of S. 17 relating to "suit and proceedings" is quite general, and having regard to the principle underlying the section, there is no justification for drawing a distinction between

S. 17—*Order of adjudication—Vesting of pro-*

Act, in an Official Assignee in India immovable property of the insolvent in Burma (*Braund, J.*) In the matter of MOTILAL FREMSUKHDAS 1938 Rang L R 166=178 I C 46=A I R 1938 Rang 324.

S. 17—*Scope and effect—If absolute bar to execution of decree—Period of pendency of insolvency proceedings—If deductible in computing limitation for execution—Provincial Insolvency Act, S. 78 (2)—Application of.*

S. 17 of the Presidency Towns Insolvency Act is not an absolute bar to execution of a decree. Leave to

PRESY. TOWNS INSOL. ACT (1909), S. 43.

contains no provision similar to the one enacted by S. 78 (2) of the Provincial Insolvency Act, and the equitable rule contained in S. 78 (2) of the latter Act cannot therefore be invoked in the case of an insolvency under the Presidency Towns Insolvency Act. (*Newsam, J.*) KRISHNAMACHARIAR v. IIAJEE SALAY MAHAMMAD SAIT. 1937 M W N. 1182.

S. 17—*Scope—Suit by creditor under S. 53, T. P. Act, for declaration of invalidity of trust deed executed by insolvent prior to adjudication—Leave of insolvency Court—Necessity.*

A suit by a creditor of the insolvent on behalf of himself and all the other creditors of the insolvent for a declaration that a deed of trust executed by the insolvent prior to his adjudication in favour of himself and his relations is void against his creditors under S. 53, T. P. Act, is a suit which falls within the general prohibition enacted in S. 17 of the Presidency Towns Insolvency Act, and is not maintainable without leave of the Insolvency Court. (*Beaumont, C.J. and Wassoodew, J.*) GANPATRAO v. JEHANGIR. 40 Bom L R 935=

S. 31 (1)—*"Person interested"—Assignee from one of two joint creditors—Proof of claim put in by creditors not admitted by Official Assignee*

An assignee of a joint debt from one of the two joint creditors of the debtor whose proof of claim was never formally admitted by the Official Assignee is not a "person interested" within the purview of S. 31 (1) of the Presidency Towns Insolvency Act, and he is not, therefore entitled to apply to the Court for the re adjudication of the debtor and annulment of the scheme of composition. (*Castello, A.J.C. and Edgley, J.*) AHMAD ALI v. ABDUL KASEM FAZLUL HUQ. I L R (1938) 1 Cal. 493.

S. 43—*Effect of—Acts of insolvent subsequent to discharge—Validity.*

himself But it would be an undesirable and unwarranted to discharge—Validity. Although under S. 43 it is the duty of the discharged insolvent to assist the Official Assignee in the realization of his property, this does not mean that acts done by

OF MADRAS v. SURYAKANTHANMAL

175 I C 543=10 R M 790=46 L W 900=1937 M W N 1251=A I R 1938 Mad 175 (Reversed on appeal (1938) 2 M L J 609) (See S. 58, PRESIDENCY TOWNS INSOLVENCY ACT)

S. 43—*Effect of—Acts of insolvent subsequent to discharge—Validity.*

Although under S. 43 it is the duty of the discharged insolvent to assist the Official Assignee in the realization of his property, this does not mean that acts done by

PRESY. TOWNS INSOL. ACT (1909), S. 115.

—S. 115—*Copy—Meaning of—Copy of notes of insolvent's public examination—Right of Official Assignee to such copy without charge—Insolvency Rules (Calcutta), R. 204.*

Under S. 115 of the Presidency Towns Insolvency Act, copy means a copy necessary under the provisions of some law, or rule having the force of law, for some step in the administration of the insolvent's estate. This test is not satisfied in the case of a copy of the notes of the insolvent's examination under S. 27 of the Act required for the purpose of taking steps to have a deed of settlement executed by the insolvent set aside. The Official Assignee is therefore not entitled to obtain such a copy without charge under S. 115 and he is liable to pay the fee prescribed by R. 204 of the Insolvency Rules (Calcutta). (*Panckridge, J.*) **OFFICIAL ASSIGNEE OF CALCUTTA, In the matter of.** 42 C.W.N. 1146 = **A.I.R. 1938 Cal. 755.**

—S. 115 (1)—*Copy of notes of insolvent's public examination—If copy of proceedings before Court.*

A copy of the notes of the insolvent's examination under S. 27 of the Presidency Towns Insolvency Act is a copy of proceedings before the Court within the meaning of S. 115 (1) of the Act. (*Panckridge, J.*) **OFFICIAL ASSIGNEE OF CALCUTTA, In the matter of.** 42 C.W.N. 1146 = **A.I.R. 1938 Cal. 755.**

—S. 125—*Matter covered by S. 115—Power of Court to prescribe fee.*

S. 125 of the Presidency Towns Insolvency Act does not give the Court power to prescribe a fee in respect of a matter covered by S. 115 of the Act. The purpose of S. 115 is clearly to save as much as possible of the insolvent's estate for distribution amongst the creditors (*Panckridge, J.*) **OFFICIAL ASSIGNEE OF CALCUTTA, In the matter of.** 42 C.W.N. 1146 = **A.I.R. 1938 Cal. 755.**

PRESS (EMERGENCY POWERS) ACT (1931), S. 2 (6)—*News sheet—Meaning of—Leaflet containing matters of historical interest and information and comment on current topics.*

—S. 4 (1) (b)—*Applicability—Promotion of enmity or hatred.*

A riot between Indians and Burmans was followed by two articles in a newspaper. The articles pointed out that the facts recited in the articles were already of common knowledge. One of the articles contained a version of the incidents of the riot and the reasons that led up to the riot. The second article pointed out that

PRINCIPAL AND AGENT.

jects", and therefore did not come within the scope of Cl. (A) of S. 4 (1). Regarding the second article, it was held that Indian bad characters were not a "class of His Majesty's subjects", as contemplated by Cl. (A) of S. 4 (1) and the article was directed against them only. Even if the article fell within the scope of Cl. (A), it came within Explanation 4, and therefore could not form the basis of an order under S. 7 (3). (*Mysa Bu Offg. C. J. Sa U and Dunkley, JJ.*) **MAUNG TO HINWIN, In the matter of.** 178 I.C. 458 = **A.I.R. 1938 Bang. 417 (S.B.).**

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890), S. 3 (a)—*Prosecution under—Determination of preliminaries and publication in Gazette—If conditions precedent to maintainability.*

In a prosecution on a charge of overloading under S. 3 (a) of the Prevention of Cruelty to Animals Act, it is not competent to the Court to acquit the accused without hearing any evidence on the ground that the preliminaries required under Ss. 1 and 2 of the Act are not shown to have been made or done. These requirements are not necessary for determination of the case on the merits. The fact that the Local Government have not determined the maximum weight to be carried by animals, and that the District Magistrate's orders have not been published in the Local Gazette cannot render the prosecution incompetent. (*Pandurang Row, J.*) **PUBLIC PROSECUTOR = RANGAN.** 48 L.W. 382 = 1938 M.W.N. 912 = **A.I.R. 1938 Mad. 949 = (1938) 2 M.L.J. 659.**

PRINCIPAL AND AGENT—*Accounts—Suit for—Basis of right.*

A suit for account is founded on the right of the principal from the other party, if the parties are in a *ver* (*Vitnan Bose, J.*) 176 I.C. 675 = **11 B.N. 65 = A.I.R. 1938 Nag. 254.**

—*Accounts—Suit for—Decree in favour of agent—*

There is a well marked distinction between the relation of agency and that of trust. But agency may often involve a relation of trust and confidence, and property in the hands of an agent may sometimes be impressed with a trust for the benefit of the principal, and an agent may not in such circumstances set up the statute of limitation in bar of a suit for accounts by the principal. (*Biswas, J.*) **KALI PADA DE v. HARI DAS DASI.** I.L.R. (1938) 1 Cal. 652 = **A.I.R. 1938 Cal. 673.**

—*Agent's remedy—Suit for accounts—When competent.*

an agent's relations which are aware of the accounts of by an agent for t be competent, the agent claims be only form in for the specific *an, J.* **RAMA-**

The article did not "tend to promote feeling of enmity or hatred between different classes of His Majesty's sub-

CHANDRA MADHAVADOSS CO. v. MOIDUNKU 177 I.C. 631 = 11 B.N. 362 = 1938 M.

PRESY. TOWNS INSOL. ACT (1909), S. 43.

him subsequent to his discharge are rendered thereby invalid, but only that in some circumstances the discharge may be revoked. An order of conditional discharge is not a
(*Roberts, C.J. and*
CHOTALAL.

—S. 45 (1).

—*Executor failing to account for money received by him*
—*Inference from.*

If an executor fails to account into his hands, it must be inferred fraudulent breach of trust in the assumed that he has applied it to his own use. That being so, he is not released from his liability to make good that money under S. 45 (1) (b) of the Presidency Towns Insolvency Act. (*Panckridge v. HIRALAL MONI*

—S. 49 (1) (a) — *Meaning of*
authority — *Meaning of*

The expression "a debt due to the Crown or to any local authority" includes not only a debt which has become due to the Crown but also a debt which is provable within the meaning of S. 46 (3), whether such demand has become provable or not and whether it is in point of law strictly a debt or not. (*Rupchand Bhiram, J. C., SECRETARY OF STATE v. OFFICIAL ASSIGNEE*
174 I.C. 157 = 10 E.S. 243 =
A.I.R. 1938 Sind 49.

—S. 52 (1) (a) — *Applicability* — *Executor not*
acting at time of insolvency specific cash or chattels
belonging to testator.

S. 52 (1) (a) of the Presidency Towns Insolvency Act does not apply to a case where an executor does not have in his hands at the time of his insolvency any specific cash or chattels representing the estate of the testator. Where, therefore, the executor had already mixed the money representing the estate of the testator with his own money and it eventually became dissipated and is impossible to trace, S. 52 (1) (a) has no application. (*Panckridge, J. DULAI CHANDRA GORAI v. HIRALAL MONDAL.* 110 C.W.N. 965.

—S. 52 (1) (a) — *Book entry by insolvent firm*
crediting certain sum to duty as charity — Money con-

charity does not constitute the firm trustees for the duty in respect of that sum which is continued to be used by the firm in its business as before. Consequently on the insolvency of the firm the duty is not entitled to payment of that sum in full. (*Sir George Kankh. SOONI-RAM v. ALAGU NACHIYAR.* 42 C.W.N. 1125 =
1938 O.L.R. 395 = 176 I.C. 908 = 48 L.W. 466 =

PRESY. TOWNS INSOL. ACT (1909), S. 86.

—S. 55 — *Burden of proof under. See PROVINCIAL*
INSOLVENCY ACT, S. 53. 40 Bom.L.R. 884.

—S. 56 — *Fraudulent preference — Transfer in*

dence of any threat of any criminal proceedings or any

32 S.L.R. 672 = 175 I.C. 214 = 10 E.S. 291 =
A.I.R. 1938 Sind 82.

—S. 58 — *Scope — Powers of Court to commit for*

but other persons who deliberately aid the insolvent in defying an order of the Court deliberately passed in the exercise of insolvency jurisdiction. The Court's powers are not limited by S. 58 of the Presidency Towns Insolvency Act. The wife and son of the insolvent, though

SURVAKANTHAMMAL 48 L.W. 462 =
A.I.R. 1938 Mad 627 = (1938) 2 M.L.J. 609
(Kaversing 46 L.W. 900 = 1937 M.W.N. 1251.)

—S. 58 (5) — *Scope — Agent of insolvent obstructing*
delivery of immovable property of insolvent sold by
Official Assignee — Contempt proceedings — Maintainability

S. 58 (5) of the Presidency Towns Insolvency Act is restricted to a refusal of an agent to hand over money and securities belonging to the insolvent. This does not cover the persistence of an agent of the insolvent in obstructing the delivery of the immovable property of the insolvent which has been sold by the Official Assignee. There is no provision in the Act enabling contempt proceedings against the agent of an insolvent for such obstruction. (*Wadsworth, J. OFFICIAL*

—S. 86 and Sch. II, B. 25 — *Adjudication of claim*
by Official Assignee — Appeal to Judge — Proper form —
Evidence, if should be taken before Judge

A claim that certain property has not vested in the Official Assignee at all or a claim to have a charge upon property which has vested in him cannot under the Presidency Towns Insolvency Act be dealt with by the

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Subsequent change in constitution of firm B—If affect its liability to G.

A, a firm ordered certain machinery from the firm *B* according to the specifications and estimates submitted by firm *B*. According to the invoices, the firm was to supply certain machinery from their own stock with the prices fixed but the prices of the rest of the machinery

firm *B* to credit all advances made by firm *A* to the name of company *G* who also confirmed this and asked the

price actually paid to the suppliers.

Held, that the firm *B* acted as an agent with regard to the machinery the price of which were made subject to the fluctuations and acted as principal with respect to the machinery the prices of which were fixed.

Held, further, that the change in the firm *B* did not affect this relationship in the absence of notice to those dealing with it as the firm is an entity. The existing proprietor was therefore liable to render accounts.

Held also, that the firm *B* was also an agent of the

—Relationship—Test

The main test to determine whether a person selling goods supplied by other is his agent is whether he is supposed to be selling his own goods when the time for sale comes or whether he is supposed to be selling the goods of his principal, for the liability of an agent to render accounts is based on the assumption that he is

silent on this point

Held, that the latter was not as but only a favoured buyer.

CHAND V. AGGARWAL BATTER. 11 R. 1938 Lah. 814.

CO. A I R. 1938 Lah. 814.

—Rights of agent—Delegation of power.

The maxim *delegatus non potest delegare* is clear and

11 R. Pesh. 39—A I R. 1938 Pesh. 63

—Rights of agent—Remuneration—If can make profits

An agent cannot make profits as against his principal, but there is no law which says that he may not get remuneration from his principal. (*Baguley and Shaw*,

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J.J.) DAW KYIN V. MA HLA VI.

176 I O. 909—11 R. R. 89—

A I R. 1938 Rang. 71.

—Rights of principal—Agent fraudulently disposing security deposited by principal—Principal not knowing of conversion receiving the very goods converted or equivalent—Effect.

pal has vested in him a right to damages for conversion which would be measured by the value of the security

11 R. P. C. 91—A I R. 1938 P. C. 23 (P. C.).

—Suit for accounts—Agent entitled to share of profits—Interest on capital—If allowable.

The ordinary rule of law as between partners or as between the principal and an agent who is paid for his services by a share of the profits of the business is that interest on capital is not to be charged in taking accounts unless there is some agreement to that effect. The agreement between a principal and agent provided that 'interest expenditure' was to be allowed before profit

—Suit for accounts—Outstandings in respect of credit transactions on termination of agency—Agent's right to credit in respect of those assets

Where on the date the agent left the business, particular outstandings arising out of credit transactions during the period of the agency were realizable assets, the mere fact that by reason of subsequent events, *s. c.*,

agent is to be remunerated

(*Varadachariar and*

RAMANIA IYER V.

A I R. 1938 Mad. 38.

—Suit by principal for accounts—Maintainability—Accounts in possession of principal—Duty to make out prima facie liability of agent.

An agent merely by handing over to his principal a set of account books is not absolved from the liability to explain them, but where the principal who is in possession of all the account books sues the agent for accounts, he is expected to disclose such particulars as will establish a *prima facie* liability of the agent to account. It is not open to any principal, who has got all the accounts of his agent in his possession to employ the machinery of the Court for examining his accounts on the off-chance of making his agent liable for any

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47 L.W. 654—A.I.E. 1938 Mad. 707—
(1938) 2 M.L.J. 112.

—Agent's right to salary—Employment of agent for fixed term—Business proving unprofitable—Employment continued though agent absent from place of business—Principal's liability to pay damages for period of employment.

A person was appointed as the agent of another for a period of three years at a certain salary. The employer finding that terminated his period, obtained a person to be absent for a period of three years at a certain salary. The employer finding that terminated his period, obtained a person to be absent for a period of three years at a certain salary. The employer finding that terminated his period, obtained a person to be absent for a period of three years at a certain salary.

Held, that the

continued despite his absence and the employer took no steps to terminate his employment on the ground of absence. *Hamley v. Pease and Partners, Limited*, (1915) 1 K.B. 698, Rel. on. (*Leach, C.J. and Lakshmana Rao, J.*) SUNDARAM CHETTIAR v. CHOCKALINGAM CHETTIAR.

47 L.W. 803—
1938 M.W.N. 653—A.I.E. 1938 Mad. 672—
(1938) 1 M.L.J. 857

—Broker—Authority to deal with securities—Stock-brokers in the ordinary course of

not of their custo

—Duty of principal—Duty to collect outstandings—Right to commission on collections

collecting the outstandings, in the absence of any agreement or custom to pay such commission. (*King and Lakshmana Rao, J.*) KARUTHAN CHETTIAR v. CHUDAMBARAM CHETTIAR.

48 L.W. 237—1938 M.W.N. 576—
A.I.E. 1938 Mad. 725—(1938) 2 M.L.J. 79.

—Duty of agent—Collection of outstandings for principal—Debtor in financial difficulty.

The duty of a commission agent, collecting outstandings on behalf of the principal and paying them over, in a case where the third party, debtor to the principal, is financially embarrassed is to do his best to collect all he

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can in the circumstances. It may be that it is more prudent not to press the debtor into immediate bankruptcy, but to take what he can in cash at the moment and to give time for the balance. No doubt an agent's authority is at least presumptively to settle in cash, in the absence of express authority to the contrary effect or of an authority by custom or usage. But where, the debtor being in financial difficulties, the agent gets all the cash he can and does his best to secure cash for the

(*Lord Wright*) GOKAL CHAND

1938 A.W.E. (P.C.) 122—

178 I.C. 425—1938 O.L.R. 501—

A.I.E. 1938 P.C. 292 (P.C.).

—Liability of principal—Agent making offer beyond his authority—Principal, if liable for contract which agent has authority to make

Acceptance of an offer made by an agent the terms of which are b acceptor's

A.I.E. 1938 Cal. 423.

behalf of his principal and within the scope of his authority binds the principal, unless in fact unauthorised to do that particular person with whom he is dealing is aware

interest thereon on the due dates and also the principal sums on the expiry of the term, on a question whether the Bank could escape liability in respect of one of such deposits on the inside the scope

not only authorised but there was no deposit rests and repayment—

secretary was expressly authorised to receive the deposits in the manner in which he did and hence the Bank was liable in respect of such a deposit. (*Gentle, J.*) MATHIAS v. KILACHERI AGRICULTURAL CO-OPERATIVE BANK.

1938 M.W.N. 3—47 L.W. 22—
A.I.E. 1938 Mad. 272—(1938) 1 M.L.J. 241.

—Relationship—Firm A ordering certain machinery from firm B—Firm B supplying some machinery with prices fixed but not subject to fluctuations of price and its commission on actual prices—Firm A selling all machinery to company G with all rights under contract with firm B—Firm B informed accordingly—

PROMISSORY NOTE.

plaintiff has formally and sufficiently proved that there was a supelation for a fresh advance, but whether it is sufficiently shown by the other side that there was no consideration for the promissory-note. (*Sir George Kankin*) **RAJA OF RAMNAD v. CHIDAMBARAM CHETTIAR.**

I.L.R. 1938 Mad. 646=

173 I.C. 772=42 C.W.N. 565=

1938 A.W.R. (P.O.) 102=1938 B.W.N. 390=

1938 A.L.R. 259=1938 O.L.R. 169=47 L.W. 618=

1938 M.W.N. 471=10 R.P.C. 235=4 B.R. 415=

67 C.L.J. 241=32 S.L.R. 448=40 Bom.L.R. 767=

1939 A.L.J. 292=A.L.R. 1938 P.O. 123=

(1938) 1 M.L.J. 597 (P.O.).

—Original cause of action—Falling back upon Permissibility—Promissory note found to be not genuine.

A promissory note on which a suit was filed by a pardanashin lady was found to have been manufactured and not a genuine one. But it was found that money was actually due on previous transactions and that no transaction of loan had taken place at the time of the execution of the note.

Held, that the plaintiff was entitled to fall back upon the original loan (*Bennet and Ismail, J.*) **GOPI NATH v. CHAMELL.**

I.L.R. 1938 All. 741=

1938 A.W.R. (H.C.) 517=1938 A.L.J. 773=

177 I.C. 815=1938 A.L.R. 781=11 B.A. 223=

A.I.R. 1938 All. 504.

—Place of payment—Presumption—specifying any place.

If a pronote does not specify any place of payment is to be made, the presumption is should be made at the place of residence of the creditor. (*Bhidi, J.*) **NANU MAL v. NAND KISHORE.**

40 P.L.R. 975

—Right to sue—One of several promissors—If can sue alone

One of several promisors under a promissory note is not entitled to sue alone without joining the other promissors, either as plaintiffs or defendants. (*Smith, J.*) **RAM SINGH v. RADHA KRISHNA**

172 I.C. 542=1938 O.L.R. 13=

1938 O.A. 110=10 B.O. 184=1938 M.W.N. 148=

A.I.R. 1938 Oudh 61.

PROMIDENT FUNDS ACT (XIX OF 1925). S. 3

(1)—Money to credit of undischarged insolvent in Provident Fund of District Council—Official Assignee, if can claim it

Money to the Provident fund deposit

Funds Act, unless and until the protection of S. 3 (1) has been extended to such fund by the Local Government. Before the extension of the protection to such fund, the Official Assignee has claim to such deposit (*Show, J.*) **SOLOMON DAVID v. THE KING.**

176 I.C. 460=11 R.M. 65=39 Cr.L.J. 754=

A.I.R. 1938 Rang. 245.

—S. 5—Provident fund—If part of estate of deceased

Provident fund deceased's estate.

—S. 3 (1)—Mode of cancellation

PROV. INSOLVENCY ACT (1920), S. 4.

that the variation or cancellation is to be made by the subscriber himself and not by anybody after his death. Consequently, a will made by the subscriber varying his original nomination and despatched to the Provident Fund authority by the executor after his death, cannot have the effect of cancelling such nomination. (*Nasim Ali and Henderson, J.*) **SECRETARY OF STATE FOR INDIA v. NAGENDRA MOHAN DE.**

42 C.W.N. 1143.

PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 16 (4)—Insolvency—Declaration of final dividend and termination of insolvency—Insolvent purchasing property more than 12 years later and enjoying same—Subsequent sale by him to wife—Application by creditor to annul and to make it available for distribution—Competency—Estoppel.

The husband of the appellant was adjudicated insolvent on 30th January, 1915, under the Provincial Insolvency Act of 1907. The Official Receiver thereupon took possession of the estate, realized it and declared a final dividend sometime in 1915. The administration having thereby concluded, the Receiver sent to the District Court all the concerned papers relating to the insolvency, and the papers were duly destroyed under the rules for the destruction of records. The insolvent subsequently began earning monies and with such acquisitions he purchased a property in 1928, and remained in enjoyment of it till 1934, when he sold it to the

was a nullity.

Held, that the conduct of the Receiver must have been within the knowledge of the creditors and the latter must therefore be regarded as having deliberately acquiesced in the position indicated by that conduct, namely, that the insolvency had become finally determin-

must be regarded as a representation by them, and revive the insolvency for the purpose of challenging a sale bona fide made in the belief that there was no insol

PROVINCIAL INSOLVENCY ACT (V OF 1920).—"Debtor" and "insolvent"—Meaning—If synonymous.

The lax use of the word "debtor" throughout the Provincial Insolvency has given rise to difficulties. In many sections it is used as meaning the debtor, while in others it is used as meaning the debtor. Strictly speaking, a debtor and an insolvent are different persons. An insolvent under the Act means a person

ation has been varied in the manner indicated therein. It contemplates

PRIVY COUNCIL.

sum which on such examination may be found due from him. (*Fast Als and Chatteris, J.J.*) SHIVA PRASAD v. HANUMAN BUX 177 I.O. 133=4 B.R. 797=11 B.P. 131=A.I.R. 1938 Pat. 392.

PRIVY COUNCIL—Concurrent findings of fact—
Courts below not influenced by same considerations—Interference.

PROMISSORY NOTE.

—Finding of fact—Interference—Local knowledge necessary for decision. See MORTGAGE—SUIT ON.

175 I.O. 457=A.I.R. 1938 P.O. 223 (P.O.).
—Leave to appeal—Order imposing penalty for contempt.

It is competent in His Majesty in Council to give leave to appeal and to entertain appeals against orders of the

open.

A new point obviously dependant on proof of facts and not merely a question of law, which has not been raised in the High Court. Where it could have been raised or in the application for leave to appeal or in the printed case before the Privy Council, cannot be raised for the first time before His Majesty in Council. (Sir

—Concurrent findings—Interference—Rule as to.

Where it is a case of concurrent findings of fact, the whole question is one of fact, and under such circumstances, it is not the practice of the Board to go behind those findings. It may be that, in exceptional cases, where it is clear that some serious injustice has or may be involved, the rule may be departed from, but that is so only in the most unusual circumstances. The rule is one which obviously it is of the utmost importance to

1938 B.D. 214=66 C.L.J. 485=10 B.P.O. 130=
40 Bom L.R. 292=1938 O.A. 281=
938) 1 M.L.J. 209 (P.O.).

40 Bom L.R. 1063=A.I.R. 1938 P.O. 183 (P.O.).

—Criminal appeal—Leave granted on certain ground—Other grounds, if can be argued.

FICTITIOUS PROCESSION.

—Duty of applicant—Absence of candour in statement of facts—Suppression of material facts—Forfeiture of right to invoke the powers of Court.

trial Committee is not a Court of criminal jurisdiction. (*Wright*)

1938 O.A.

193

RT OF
476=
385.
See
COURT
N. 230.

—Finding of fact—Finding on question of malice.

A finding on a question of malice is a finding in fact. The state of a man's mind is as much a fact as the state of his digestion. (*Lord Atkin*.) SARAPATHI v. HUNTLEY. 173 I.O. 19=1938 A.L.J. 179=

10 B.P.O. 180=1938 A.W.R. (P.O.) 79=

1938 F.W.N. 274=47 L.W. 409=

A.I.R. 1938 P.O. 91 (P.O.).

Original cause of action.

Place of payment.

Right to sue.

—Consideration—Proof—Part only proved as being towards a barred debt—No stipulation as to fresh advance proved—Effect.

A promissory note having been given, consideration is to be presumed. The question then is not, whether the

PROMISSORY NOTE.

plaintiff has formally and sufficiently proved that there was a stipulation for a fresh advance, but whether it is sufficiently shown by the other side that there was no consideration for the (Rank) RAJA OF CHETTIAR.

1933 A.W.R. (P.O.) 102—1938 O.W.N. 390—
1933 A.L.R. 229—1938 O.L.R. 169—47 L.W. 618—
1933 M.W.N. 471—10 R.P.C. 235—4 H.R. 415—
67 C.L.J. 241—32 S.L.B. 448—40 Bom.L.R. 767—
1933 A.L.J. 292—A.L.R. 1938 P.O. 123—
(1938) 1 M.L.J. 507 (P.O.).

—Original cause of action—Falling back upon—
Permissibility—Promissory note found to be not genuine.
A promissory note on which a suit was filed by a pardanash lady was found to have been manufactured and not a genuine one. But it was found that money was actually due on previous transactions and that no transaction of loan had taken place at the time of the execution of the note.

Held, that the plaintiff was entitled to fall back upon the original loan (Bennet and Jemal, J.) G.O.P. NATH: CHAMELI. I.L.R. 1938 All 741—
1938 A.W.R. (H.O.) 517—1938 A.L.J. 773—
177 I.O. 815—1938 A.L.R. 781—11 B.A. 223—
A.L.R. 1938 All 504

—Place of payment—Presumption—Promote not specifying any place.

If a promisor does not specify any place where payment is to be made, the presumption is that payment should be made at the place of residence or business of the creditor (Bhide, J.) NANU MAL V. SHIPRA MAL—NAND KISHORE 40 P.L.R. 976

—Right to sue—One of several promissors—If can sue alone

One of several promisees under a promissory note is not entitled to sue alone without joining the other promisees, either as plaintiffs or defendants. (Smit RAM SINGH V. RADHA KRISHNA

172 I.C. 542—1938 O.L.R.
1938 O.A. 46—10 B.O. 184—1938 O.W.N.
A.I.R. 1938 Oud

PROVIDENT FUNDS ACT (XIX OF 1925)

(1)—Money to credit of undischarged insolvent in a Provident Fund of can claim it.

Money to be the Provident fund deposit pursuant to the Provident Funds Act, and has been extended to such fund by the Local Government. Before the extension of fund, the Official Assignee (Shaw, J.) SOLOMON DAVI

176 I.O. 460—11 B.A. 234—L.J. 31.
A.I.R. 1938 Rang. 245

—B 5—Provident fund—If part of estate of deceased

Provident fund and gratuity do not form part of a deceased's estate (Lobo, J.) MADU KRISHNA IN RE.
177 I.O. 416—11 B.S. 61—
A.I.R. 1938 Sind 160

—B 5 (1)—Original nomination by subscriber—
Mode of cancellation—Will by subscriber varying such nomination sent to authority after his death—Effect of.

S 5 (1) of the Provident Funds Act contemplates that the original nomination made by a subscriber will entitle the original nominee to receive the provident fund money absolutely until such nomination has been varied in the manner indicated therein. It contemplates

PROV. INSOLVENCY ACT (1920), S. 4.

that the variation or cancellation is to be made by the subscriber himself and not by anybody after his death. Consequently, a will made by the subscriber varying his nomination as President cannot (Naim)

INDIA V. NAUGENDRA MOHAN DE. 42 O.W.N. 1143.
PROVINCIAL INSOLVENCY ACT (III OF 1907), S 10 (4)—Insolvency—Declaration of final dividend and termination of insolvency—Insolvent purchasing property more than 12 years later and enjoying same—Subsequent sale by him to wife—Application by creditor to annul and to make it available for distribution—Competency—Estoppel.

The husband of the appellant was adjudicated insolvent on 30th January, 1915, under the Provincial Insolvency Act of 1907. The Official Receiver thereupon took possession of the estate, realized it and declared a final dividend sometime in 1915. The administration having thereby concluded, the Receiver sent to the District Court all the concerned papers relating to the insolvency, and the papers were duly destroyed under the rules for the destruction of records. The insolvent subsequently began earning monies and with such acquisitions he purchased a property in 1928, and remained in enjoyment of it till 1934, when he sold it to the appellant. In 1936, one of the creditors of the insolvent in the insolvency applied to the Court claiming that the appellant got no title under the sale and that the property should be applied and administered under the Insolvency Act, and the District Judge relying on S 16 (4) of Act III of 1907, held that the sale by the insolvent was a nullity.

Held, that the conduct of the Receiver must have been within the knowledge of the creditors and the latter must therefore be regarded as having deliberately acquiesced in the position indicated by that conduct,

—“Debtor” and “insolvent”—Meaning—If synonym

others it is used as meaning the debtor. Strictly speaking, a debtor and an insolvent are different persons. An insolvent under the Act means a person against whom an order of adjudication has been made, a debtor is a person who has made himself amenable to adjudication but who has not yet been adjudicated (Burn and Mockett, J.) MALLIKARJUNA RAO V. OFFICIAL RECEIVER, KISTNA

—S held by receiver under orders of Court See PROVINCIAL INSOLVENCY ACT, SS. 68 AND 4

A.I.R. 1938 Nag 320.

PROV. INSOLVENCY ACT (1920), S. 4.

—Ss 4 and 24—*Finding in enquiry under S. 24 that debt is fictitious—If res judicata.*

The summary enquiry under S. 24 of the Provincial Insolvency Act as to whether a debtor is entitled to present a petition has nothing to do with S. 4 of the Act, which section only comes into play after adjudication in disputes between the debtor's estate representative receiver and the claims of one or all of his creditors. Consequently, a finding in an enquiry under S. 24 that a debt is fictitious is not final and does not bind as *res judicata* under S. 4 of the Act. (*Addison and Abdul Rashid, J.J.*) **SADHU RAM v. KISHORI LAL.** I.L.R. 1938 Lah. 535=177 I.C. 217=11 B.L. 281=40 P.L.R. 316=A.I.R. 1938 Lah. 490.

—Ss. 4 and 53—*Powers of insolvency Court—Transfer by insolvent more than two years before his*

It is open to the Insolvency Court to try such questions or leave them to be decided by an ordinary Civil Court, if it chooses to do so. Where a transfer is made by a person more than two years before his adjudication as

I.L.R. 1938 Lah. 439=40 P.L.R. 1000=

—Ss. 4 and 56(3)—*Real people's hands—Receiver's remedy*

The words in S. 4 of the Act "subject to the provisions of this Act" refer to the provisions of the Act, and one of the provisions is S. 56(3). Before a receiver can be appointed, a suit must be shown to belong to the insolvent, not the receiver. If the receiver has no possession, he cannot sue against him. Even on the assumption that the receiver is a stranger in possession, he would not be entitled to sue against him. Under S. 4 of the Insolvency Act should be held to be tantamount to a suit under S. 53 of the T.P. Act, it would follow that such a suit would have to be in time when insolvency proceedings began and this would be six years under Art. 120 of the Limitation Act from the date of accrual of the cause of action. (*Gruar and Niyogi, J.J.*) **GODBOLE v. MST. NANIBAI.** 1938 N.L.J. 279=A.I.R. 1938

—Ss 4, 53 and 56—*Relative scope of attack partition made more than two years insolvency.*

Ss 53 and 56 of the Provincial Insolvency Act merely lay down a rule of substantive law or a rule of evidence favouring the Official Receiver's jurisdiction upon a Court of insolvency. The operation of S. 4 of the Act, which has taken place more than two years before the date of insolvency, was held to be inapplicable under S. 4 of the Insolvency Act. (*Gruar and Niyogi, J.J.*) **GODBOLE v. MST. NANIBAI.** 1938 N.L.J. 279=A.I.R. 1938 Nag 546.

—S 4—*Scope—Annulment of transfer—Liability of transferee for means profits—Question as to—Jurisdiction of Court to inquire into.*

S. 4 of the Provincial Insolvency Act confers on the Court very wide powers, which are sufficient to enable the Court to inquire into the question as to the liability of a transferee of the insolvent for means profits of the property, the transfer being annulled. Whether it

PROV. INSOLVENCY ACT (1920), S. 5.

should inquire into it or not is a matter for the discretion of the Court. (*Pollock, J.*) **KISANLAL v. DINAJI.** 172 I.C. 573=10 B.N. 223=20 N.L.J. 271=A.I.R. 1938 Nag. 50.

—S. 4(1)—*Construction—"Of any nature whatsoever"—Meaning—If includes all questions of what*

vincial Insolvency of any nature whatsoever in conjunction with the earlier part of the section which refers to "question whether of title or priority" and with the opening words of the section "subject to the provisions of this Act." In other words the phrase must be subject to the limitation of *iusdem generis*, or to the limitation to orders not specifically provided for in the

BUDHSEN v. ASHAFI LAL. 1937 A.I.J. 1071=I.L.R. 1938 All. 50=1938 A.L.R. 68=172 I.C. 997=10 B.A. 455=1937 A.W.R. 1068=A.I.R. 1938 All. 28.

Court to be fictitious in proceedings on an application by

title. A purchaser preferred a claim to certain property on the basis of his purchase from the insolvent after the property was attached in execution of a money decree. That claim was not investigated but was dismissed for default. It was held that as the order dismissing the claim for default was neither final nor conclusive it was

A.L.R. 1938 Cal. 373.

that petitioner became entitled to debt under award of arbitrator subsequent to petition but within three months of petition—*Maintainability.*

The Insolvency Court would not grant leave to amend an insolvency petition presented by a creditor if the effect of the amendment would be to introduce a debt which after the period of three months has elapsed, would not be a debt upon which the petition could be founded. But if within the period of three months a debt has been made a ground of the petition and it afterwards becomes desirable to add another party or to

PROV. INSOLVENCY ACT (1920), S. 6.

cure a mere defect or slip, the amendment will be allowed. An insolvency petition against a debtor was presented by a person describing himself as a creditor of the debtor and he found his petition on a debt due by the debtor to

an award was made in arbitration proceedings between the petitioner and a third person who also claimed to be a partner in the firm, and as a result of that award the petitioner became solely entitled to the debt on which the petition was founded. Subsequently the petitioner applied, more than three months after the acts of insolvency, for leave to amend his petition by stating that the entire right to the debt vested in him by reason of the award.

Rule 10—Coparceners incurring joint debt or liability

sonal liability on other members of the family render impossible to treat any act of insolvency committed by him in relation to the affairs of the family generally as an act of insolvency committed by the other members of the family also. Consequently the joint Hindu family cannot as such be adjudicated insolvent; but two or more members of the family who have incurred a joint personal liability may present a joint petition in insolvency or may be proceeded against on one creditor's petition in case the joint act of insolvency can be brought home to them. Minor members must, however be excluded in any case from insolvency proceedings started

(Court
AHABIR

E 181 =
10 R F 399—18 Pat LT 839 =
1937 P W N. 865—A I R 1937 Pat 665

—S. 6 (a)—Trust-deed by debtor for benefit of creditors—Creditor not party to deed—If can avail of act of insolvency

A creditor who is not a party to a trust deed executed by the debtor for the benefit of his creditors and to

PROV. INSOLVENCY ACT (1920), S. 16.

confirmed. (*Tek Chand, J.*) LAL CHAND v. HOGHA RAM. 40 P.L.R. 841—A.I.R. 1938 Lah. 819.

—S. 10—Grant of permission—Duty of Court.

Under S. 10 of the Provincial Insolvency Act, it is

tion for permission to bring a second application and there has been no such finding by the Insolvency judge, it cannot be presumed that the Court permitted the second application merely because it referred to the annulment of the previous adjudication in the subsequent order of adjudication. (*Almond, J. C.*) GOPICHAND DUNICHAND v. HUKMAT KHAN. 10 R. Pesh 50 = 173 I.O. 650—A.I.R. 1937 Pesh 25 (1).

—S. 16—Locus standi to apply—Creditor whose

—S. 16—Effect of permission of injury to

solvency Act
of collusion

—S. 16—Order for substitution—When may be made.

Where a petitioning creditor, who is a representative of the whole body of creditors, comes to an arrangement with the debtor and seeks not to prosecute his application any further, it cannot possibly be said that he is still proceeding with due diligence. On the contrary there is a failure to proceed with due diligence in the highest degree. S. 16 of the Provincial Insolvency Act does apply in such a case and an order for substitution should be made. (*Verle, J.*) SAGARNAL HANOMAN PRASAD v. ABDUL RAHMAN. 173 I.O. 631 = 1938 O A 201 = 1938 I.R. 125 = 1938 O W N 230 = 10 R. 225 = A I R, 1938 Oudh 101.

—S. 16—Substitution—Express order, if necessary—Inference from conduct of Court—Continuation of proceedings on application of creditor seeking substitution.

An express order of substitution is not necessary under S. 16 of the Provincial Insolvency Act, but substitution can be inferred from the Court continuing proceed-

—S. 6 (e)—Sale in execution.
Insolvency—When occurs—Date of sale.
motion.

An act of insolvency in S. 6 (e) Insolvency Act occurs when the property of the insolvent is sold in execution of a decree, and not when the sale is

substituted by another creditor and so on. (*Thomas, J.*) Zia-ul-Hasan and Verle, JJ) RAGHURAJ SINGH

PROV. INSOLVENCY ACT (1920), S. 20.

v. ABDUL RAHMAN.

1938 O. A. 666=

177 I.O. 392=1938 O.L.R. 417=

11 E.O. 11=1938 O.W.N. 871=

A.I.R. 1938 Oudh 206 (F.B.).

—Ss. 20 and 56 (2) (b)—Applicability—Order of adjudication—Appointment of receiver—Adjudication set aside on appeal—Effect—If makes receiver—Right to remuneration—If l

Proceedings following an adjudication invalidated merely because that order was set aside on appeal; and when a receiver appointed on adjudication, he is entitled to be paid his remuneration.

Appointment of receiver under S. 56 into one under S. 20 or make him an interim receiver. The receiver is subsequently entitled to his remuneration under S. 56 of the Act. (Bose, J.) LAXMAN PRASAD v. PRASAD. 177 I.O. 650=11 E.N.

1938 N.L.J. 40=A.I.R. 1938 Nag. 40.

—Ss. 21, 22 and 56—Comparison of powers conferred by—Recovery of property alleged to belong to the insolvent.

possession. a title, a Court direct him to Court has to vent is entitled venient courts

—S. 21—Enquiry under—Finding that debt is fictitious—If *Res judicata* See PROVINCIAL INSOLVENCY ACT, Ss. 4 and 24. 40 P.L.R. 316.

—S. 25 (1)—Applicability "any other sufficient cause"—Dismissal of petition on statement by creditor

of that section (Bisley, C.J.) RAMASWAMI IYER v. SUBRAMANIAN CHETTIAR.

A.I.R. 1938 Mad. 267=(1938) 2 M.L.J. 179.

—S. 25 (1)—Burden of proof—Duty of creditor—Debtor's ability or inability to pay debts—Onus.

PROV. INSOLVENCY ACT (1920), S. 23.

NAPPA REDDY v. VENKOBAYYA.

(1938) M.W.N. 283=177 I.O. 627=47 L.W. 772=

A.I.R. 1938 Mad. 489.

—S. 26—Applicability—Conditions—Fivolous or vexatious nature of petitions—If to be decided at time of dismissal.

26 of the

dismissal

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though it did not do so at the time of the dismissal of the petition under S. 25 (1). (Bisley, C.J.) RAMASWAMI IYER v. SUBRAMANIAN CHETTIAR.

A.I.R. 1938 Mad. 267=(1938) 2 M.L.J. 179.

S. 26—"Debtor"—Meaning of.

The word "debtor" in S. 26 of the Act means any one who has made an application has been a person applying for a discharge need not in truth be a debtor. RAMASWAMI IYER v. SUBRAMANIAN CHETTIAR.

A.I.R. 1938 Mad. 267=

(1938) 2 M.L.J. 179.

—S. 26—Right to compensation—Petition when frivolous or vexatious.

OF THE ACT. IT WAS FOUND ON EVIDENCE THAT THE DEBTOR HAD

litor had

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RAMA-

A.I.R. 1938 Mad. 267=(1938) 2 M.L.J. 179.

—S. 27—Time fixed for application for discharge—Power of Court to extend.

A Court has jurisdiction to extend the time originally fixed under S. 27 of the Provincial Insolvency Act for

of that section (Bisley, C.J.) RAMASWAMI IYER v. SUBRAMANIAN CHETTIAR.

A.I.R. 1938 Mad. 267=(1938) 2 M.L.J. 179.

—S. 25 (1)—Burden of proof—Duty of creditor—Debtor's ability or inability to pay debts—Onus.

1938 O.A. 262=A.I.R. 1938 Oudh 122 (F.B.).

—S. 27 (2)—Annulment proceedings—Power to keep pending. See PROVINCIAL INSOLVENCY ACT, Ss. 35 and 27 (2). A.I.R. 1938 Nag. 312.

—S. 28—Applicability—Arrears of income tax

debts. (Burn and Venkataramana Rao, J.J.) CHINN—All the property of the insolvent is vested. It cannot be

PROV. INSOLVENCY ACT (1920), S. 23.

virtue of the certificate issued under S. 46(2) of the Income tax Act recover it by sale under the Land Revenue Act. (N.J. Roughton, F.C.) KIALCHAND DEVCHAND & CO LTD., v. DHUNDIRAJ GANESH.

1938 N L.J. 128.
—S. 28—Hindu manager's insolvency—Debts due from manager brother—Shares of others, if vest in Official Receiver.

In a joint Hindu family consisting of brothers, on the insolvency of the brother, who is a manager of the family, the shares of other brothers do not vest in the Official Receiver when such manager brother is adjudged insolvent for debts due personally from him. (Jas Lal, J.) KISHAN LAL v. LAL CHAND

177 I.O. 639—11 R.L. 349—
A.I.R. 1938 Lah. 20.

—Ss. 28 and 59—Scope and effect—Suit by insolvent after adjudication and pending insolvency—Maintainability.

It is fundamentally opposed to all principles of insol-

PROV. INSOLVENCY ACT (1920), S. 28.

—S. 28 (2)—Order as to vesting—Rule to be observed.

On D being adjudged an insolvent, one of D's creditors brought a notice of motion alleging that D had leased his fields on half produce rent and claiming attachment of the other half which was alleged to belong to D. The lessee alleged that the land was let on a rental basis and that he was entitled to all the crops. The lease was found to be sham, and the lower Court passed an order to the effect that the estate was to get the whole produce.

Held, that the motion being moved on the basis of the fact that the lessee was entitled to half the produce it was not proper for the lower Court to pass an order which had the effect of bringing the whole of the produce into the estate and that the lessee was entitled to half the produce. (Stone, C.J.) RAMA YADU TELI v. DHEKAL JHANA TELI.

175 I.O. 528—
10 E.N. 460—A.I.R. 1938 Nag. 247.

—S. 28 (2)—"Property"—Insolvency of Hindu

WORKS.

40 Bom.L.R. 956.

on the insolvency of the father cannot avail himself of

insolvency Court is (Bhadi, GUM.

—S. fund amon The ins been to so vesting. As soon as the amount is deposited and reaches the hands of an undischarged it ceases to be a compulsory deposit attachment, and it becomes the abso

nd the attachment (Pandurang Row, FICIAL RECEIVER, 1917 IV 100

estate and the evidence of the purchaser showed that what was intended to be sold and purchased was the entire property for a consideration which represented the value of the whole property and not merely the insolvent's own half share after excluding the son's half share, and the Official Receiver had the power on that day to sell the son's share also.

Held, that it must be deemed that the power to sell the son's share was exercised by and that the sale was of the entire p

Rao and Horwath, J.J.) RAMA RA

(Courtney Terrell, C.J. and Manohar Lall J.)

tion to Debt Conciliation Board pending insolvency—Leave of insolvency Court not obtained—Subsequent—Competency—

S of the Madras ted by law or i

PROV. INSOLVENCY ACT (1920), S. 28.

contravention of any statutory prohibition. An application made to the Debt Conciliation Board is a legal pro-

PROV. INSOLVENCY ACT (1920), S. 34.

By the combined operation of Ss. 28 and 51 an execution sale of the property of the debtor is order of adjudication admission of an order is not given the The title of the good faith is protected there may be an

the estate is adjudicated has power to seize and sell the shares of the sons on the

A.I.R. 1938 Mad. 908.

on 3rd April, not excluded from GO. or not the salary receiver is excluded will be whether action was made,

when adjudication stands.

When adjudication un-

the salary was liable to attachment and sale in execution

11 H.P. 190-19 Pat.L.T. 860-

A.I.R. 1938 Cal. 325.

commence a suit when his debtor has merely applied to be adjudicated insolvent. Subsequent adjudication would not affect the maintainability of a suit without such leave. The intention of Sub-S. (7) is only that the title of the Court or the Receiver appointed by it to the insolvent's property shall relate back to the date when the petition for adjudication was filed. When an adjudication is annulled, it is annulled for all purposes and the position with reference to a suit filed without leave of Court is as though they had never been any necessity for obtaining leave of the Court. (*Panchridge, J.*) CHANDMULL V. SATYA CHURN.

42 C.W.N. 34.

—Ss. 28 (2) and (7) and 51—Scope and operation—Execution sale subsequent to admission of insolvency petition but prior to adjudication—Validity—Purchase by decree holder with leave

The disability of a Provincial Insolvency Act the property of the insolvent adjudication. A decree holder can sue till the date of the order of adjudication. But by reason of S. 51 of the Act he can claim the sale proceeds of the execution sale only if they have been realised before the date of the admission of the insolvency petition.

1938 E.D. 297-10 E.A. 631(1)-1938 A.L.R. 315-1938 A.L.J. 134-A.I.R. 1938 All. 198.

—S. 28 (7)—Relation back—Limits of rule. *See* PROV. INSOL. ACT, SS. 28 (2) (7) AND 37

42 C.W.N. 34.

—S. 28 (7)—Scope—Doctrine of relation back—If subject to S. 51 (3). *See* PROVINCIAL INSOLVENCY ACT, SS. 28 (2) AND (7) AND 51. 1938 M.V.N. 841.

—S. 31—Construction—'Arrest or detention'—Means—If includes order for imprisonment by criminal Courts. *See* CR. P. CODE, S. 488 (3).

1938 A.L.J. 225.

—S. 34 (1)—Applicability—Maintenance decree in favour of wife against husband—Arrears due under

(1) of the Provincial Insolvency Act. A decree for maintenance is clearly distinct from an order for alimony. No execution of the maintenance decree against the insolvent husband can be taken out without leave of the insolvency Court. (*King, J.*) HANIBABEYBI SYED

PROV. INSOLVENCY ACT (1920), S. 35.

MUNURDEEN SAHEB.

1938 M.W.N. 1235 = (1938) 2 M.L.J. 1042.

—S. 35—Annulment of adjudication—Debtor adjudicated on his petition—Transfer deeds executed by debtor subsequently found to be fictitious—If ground for annulment of adjudication.

An insolvent had included in his petition for adjudication fictitious debts claimed to be owed by him. The petition was passed. A large part of the debts were found to be fictitious. The petition was annulled.

three deeds of sale were found to be fictitious. On consideration the assets considerably exceeded the liabilities and the petitioner was able to pay his debts.

Held that the adjudication of the petitioner in insolvency should be annulled. (James and Agarwal, J.) RAJENDRA PRASAD v. NAGESHWAR UPADHYA.

176 I.C. 541 = 11 B.P. 57 = 4 B.R. 733 =

1939 P.W.N. 453 = A.I.R. 1938 Pat. 368.

—Ss. 35 and 27 (2)—Annulment proceedings—Keeping pending—Property—Powers.

It is a matter for consideration whether in all ordinary cases, annulment proceedings shall not be kept pending so long as proceedings under Ss. 53 and 54 are outstanding. The better view seems to be that it can be under S. 27 (2) (Stone, C.J. and Butt, J.) SULEMAN LATIF v. LAXMAN.

177 I.O. 760 =

A.I.R. 1938 Nag. 312.

—S. 35—Jurisdiction to annul adjudication—Insolvency petition more than three months after act of insolvency—Adjudication—Power of succeeding Judge to annul on ground of want of jurisdiction.

A Judge in insolvency is competent to revise his own order or an order of his predecessor adjudicating a person an

A.I.R. 1938 Mad. 898 = (1938) 2 M.L.J. 385.

—S. 36—Applicability—Stay of insolvency proceedings before Court at Cawnpore by Chief Court of Oudh—Validity—Insolvency Judge at Cawnpore, if bound to stay—If can reopen after he stayed.

The Chief Court of Oudh could not stay a case pending before the Insolvency Judge at Cawnpore unless it is a High Court. Where such an order of the Insolvency Judge at Cawnpore is made by the High Court, with a remark, the Judge to decide to stay or not, it does

PROV. INSOLVENCY ACT (1920), S. 43.

—S. 37—Effect of annulment—Suit filed without leave of Court. See PROV. INSOL. ACT, Ss. 28 (2) (7) AND 37. 42 C.W.N. 34.

—S. 37—Validation of proceedings—Extent—Limits. See PROVINCIAL INSOLVENCY ACT, Ss. 53, 54 AND 37. A.I.R. 1938 Nag. 312.

—S. 37—Vesting order under—If to be simul-

passed subsequently is perfectly valid and cannot be attached as being without jurisdiction. (Pandurang Rao, J.) BALUSWAMI NAIDU v. OFFICIAL

RECEIVER, MADURA. 1938 M.W.N. 455 =

47 L.W. 587 = A.I.R. 1938 Mad. 752 =

(1938) 1 M.L.J. 824.

—Ss. 37 (2) and 75—Absence of notice of order of annulment—Questioning in other independent proceedings—If permissible.

Any complaint as to absence of notice of order of annulment under S. 37 (2) can only be agitated by way of an appeal under S. 75 against the order of annulment and cannot be challenged in other proceedings. (Norman.) ALLAH DIN v. GHISU LAL.

(1937) A.M.L.J. 101.

—S. 42—Transactions not covered by Ss. 53 and 54—Power of Court to review.

It is quite clear that, in view of the wide powers conferred upon the Court by S. 42 of the Provincial Insolvency Act, the Court has power generally to review any questionable transactions covered by that section

—S. 42 (1) (a)—Burden of proof under—Deficiency as assets—Debtor's responsibility—Onus.

Where the assets of the insolvent do not realise eight annas in the rupee, S. 42 (1) (a) of the Provincial Insolvency Act, the burden of satisfaction is on the creditor.

J.) AHMED NARAI-

KAYAN v. DINDAULI NARAI.

176 I.C. 973 = 11 R.M. 208 =

1938 M.W.N. 528 = 47 L.W. 653 =

A.I.R. 1938 Mad. 590 = (1938) 1 M.L.J. 760.

—S. 42 (1) (i)—Remote transactions—Court, if

insolvency Act, the Court can only annul the order if it is found to be void. (J.) KAZI AHMED BANK. 1938 M.W.N. 1153.

insolvent prior to the order of S. 42 (1) (i) of the Provincial Insolvency Act, the Court has power to discharge. (K.R. v. DINDAULI NARAI.) 42 C.W.N. 1153.

insolvent—Order of

PROV. INSOLVENCY ACT (1920), S. 43.

Per *Thomas C. J.*:—Though the provisions of S. 43 of the Provincial Insolvency Act are annulment of adjudication does not course, but has to be the subject of the Court; in other words it does automatic annulment on the failure of the debtor to apply for a discharge. (*Thomas, C. J. Zia ul Hasan*)

was by order made to vest in the Court Amin, there is hardly any justification for the contention that annulment restores the *status quo*. (*Darling, S.M. and Bomford, J. U.*) KRISHNA PRASAD v. LAL BAHADUR.

1938 A.L.J. (Supp.) 17=1938 R.D. 402=

1938 A.W.R. (B.B.) 177=

1938 O.A. 424=1938 O.W.N. 641.

—S. 44 (1)—Discharge—Effect—Insolvency Court if becomes *functus officio*—Refusal of mutation to auction purchaser of insolvent's property—If reverts it in insolvent

The discharge of an insolvent could not possibly mean the divesting of the official receiver. The Insolvency Court does not become *functus officio* as soon as the insolvent is discharged. The proceedings can undoubtedly go on in respect of the property in the hands of the receiver, in spite of an order of discharge. Where certain property of the insolvent was sold prior to adjudication. In execution of a decree, the fact that mutation was refused to the purchaser on a date after the insolvent was discharged, could not have the effect of divesting the official receiver or the auction purchaser and revealing the property in the insolvent. (*Mulla, MAHANGE LAL v. FIRM SURAJ PRASAD.*)

Where a creditor holding a mortgage decree against the insolvent, realises his security before the order of discharge is passed, but does not value his security and prove the balance personally due from the insolvent, the order of discharge releases the insolvent from personal liability under the mortgage as it is a debt provable under the Act and the creditor cannot subsequently claim

S. 49 does not lay down a mandatory method of proving a debt. It merely lays down one of the modes in which a debt may be proved. (*Courtney Terrell, C. J. and Master Lal, J.*) BHUDERMULL v. HAJI NAHOMED.

173 I.C. 988=4 B.L. 373=

10 R.P. 470=19 Pat L.T. 364=

A.I.R. 1938 Pat. 65.

—S. 50—Applicability—Annulment of adjudication—Subsequent application to expunge or reduce debt of creditor—Competency—Power of Court to act under S. 50.

PROV. INSOLVENCY ACT (1920), S. 51.

the insolvency has come to an end by annulment of ad-
n annulled it
ler S. 50 and
(Port and
OKHIRAN

CHOUTHMAL BHAGIRATH.

16 Pat. 754=1938 P.W.N. 222=175 I.C. 306=

after admission of insolvency petition against debtor—Decree holder aware of pending insolvency and not informing executing Court of same—Purchase by—If protected.

An insolvency petition against a debtor by a creditor was admitted in October, 1932. Notice of the petition was published in the Gazette by 14-1-1933. Another creditor of the debtor, the appellant, brought the properties to sale in execution of a decree obtained by her against the debtor and the sale took place on 23-1-1933. Appellant was represented in the execution proceedings by her agent C. The agent was present during the talks held in respect of a proposal for composition, but instead of reporting to the appellant and taking her instructions as he promised to do, he got the properties purchased in the name of his employer, the appellant. The executing Court was not informed by the appellant or her agent, C., of the pending insolvency and was unaware of the insolvency proceedings.

Held, that the appellant was not a *bona fide* purchaser and was not protected by S. 51(3) of the Provincial Insolvency Act, and the sale was therefore invalid, as

W. 670=A.I.R. 1938 Mad. 718=

(1938) 1 M.L.J. 781.

—S. 51(3)—Construction and scope—"In all cases"—Judgment debtor, adjudicated insolvent—Subsequent sale of his property in execution—Validity—Jurisdiction of executing Court.

There is no doubt about the all-embracing character of the words in S. 51(3) of the Provincial Insolvency

all cases prior to adjudication; no part of the section can have any bearing upon transactions subsequent to adjudication. Upon adjudication, the property of an insolvent vests immediately in the Official Receiver, and in so far as an insolvent judgment-debtor is concerned, there is no property of his which can be sold in execution by the executing Court. A Court executing a decree has therefore no power to sell a judgment debtor's property after the judgment-debtor has been adjudicated insolvent, and a sale so held in execution is invalid, irregular and inoperative. The fact that the Official Receiver is given proceedings would not make on the receiver. (*Burn and KARJUNA RAO v. OFFICIAL*)

I.L.R. 1938 Mad. 1060=

PROV INSOLVENCY ACT (1920), S. 51.

178 I.C. 135=47 L.W. 705=(1938) M.W.N. 201=
A.I.R. 1938 Mad. 419=(1938) 1 M.L.J. 471.
S. 51 (3)—"Property of a debtor"—Meaning—
If includes property of debtor already adjudicated in-
solvent.

The words "the property of a debtor in S. 51 (3) of
the Provincial Insolvency Act, read with the heading of
the section, must mean only the property of a person
which has been sold previous to adjudication, the "trans-
action" being the sale. All sales both before and
after the presentation of a petition but before adjudica-
tion by the Court are protected so
title to a purchaser is concerned.

(f.)
KISTN

—S. 52—Affiliability—No
insolvent's property.

Subsequent presentation and admission of insolvency

to sell rema-
cation made
of sale is not
S. 52 of the
executing C
30.9.1935.

SIVAYYA v. SURYANARAYANA. 48 L.W. 279=
1938 M.W.N. 841=A.I.R. 1938 Mad. 908.

or continue proceedings under S. 53 or S. 54 of the
Provincial Insolvency Act. Where therefore the cre-

the application and obtain an annulment of the
transfer after the annulment of the adjudica-
tion. No question of validating the proceeding
under S. 37, arises and the property transferred, having
ceased to be the property of the debtor, the Court has

PROV INSOLVENCY ACT (1920), S. 53.

no power to deal with it under S. 37. (Stone, C.J. and
Gose, J.) SULEMAN LATIF v. LAXMAN.

177 I.C. 760=A.I.R. 1938 Nag. 312

S. 53—Burden of proof.
The onus of proof in proceedings under S. 53 of the
Provincial Insolvency Act is on the receiver in the first
instance. (Ismail, J.) MUNNOO LAL v. P. K.
BANERJI (OFFICIAL RECEIVER)

I.L.R. 1938 All. 800=1938 A.L.R. 810=
178 I.C. 75=1938 A.W.R. (H.C.) 566=
1938 A.L.J. 878=A.I.R. 1938 All. 558.

(f.) KULLAPPA REDDIAR v. VEERAPPA CHETTIAR.

ence voidable as
ayer has to prove
adulterity or in bad
transfer gave no
r, and if there was
ceiver has then to

of the minor under S. 53. A transferee cannot
be fraudulent by deputy. The rule as to the onus is

dency Towns
terms to S.
'mynkar, J.)
78 I.C. 373=
1938 Bom. 449.

—Ss 53 and 54—"Date of transfer"—Date of
execution or date of registration.

or requi-
poses is
because
But is
used in the
first instance but ordered on appeal, the date of registra-
tion is not the date of the appellate order directing
registration, but the date on which it was first presented
for registration, in view of S. 75 (3) of the Registration
Act. (Madhavan Nair and Sudart, J.J.) SOMAPPA v.

PROV. INSOLVENCY ACT (1920), S. 53.

OFFICIAL RECEIVER OF BELLARY.

(1938) M.W.N. 291—11 L.W. 522—
A.I.R. 1938 Mad. 801—(1938) 2 M.L.J. 362.
—S. 53—Duty of Court.

In an action to set aside a sale under S. 53, it is not enough to pick out a few circumstances and to find explanations for them and then deduce therefrom that the creditor has discharged his burden of proof. But it is essentially necessary that the Court should consider all the facts in relation to each other and weigh them as a whole and then come to a conclusion. (Cornish, J.)

PROV. INSOLVENCY ACT (1920), S. 54.

substantially in issue in the suit on foot of the mortgage, the decree in which was transferred. (Ismail, J.)
MUNNOO LAL v. P. K. BANERJI (OFFICIAL RECEIVER).
I.L.R. 1938 All. 800—1938 A.L.R. 810—
178 I.C. 75—1938 A.W.R. (H.C.) 566—
1938 A.L.J. 878—A.I.R. 1938 All. 555.

—S. 53—Scope—Transfer not bona fide—Subsequent transfers—If affected.

Where a transfer by an insolvent is not bona fide, the subsequent transfers by the transferees also fail. (Cornish, J.) KANDASWAMI GOUNDAN v. RANGA-

is to be found only in the conduct of the parties. It is Provincial Insolvency Act and must be annulled. Where

a creditor has filed suits parties of the insolvents, per creditors whom the it is only reasonable to idea of preferring one tive (Madhavan Nair

175 I.C. 430—10 B.N.

—S. 53—Procedure—
Joint trial with consent
deal separately with each a

Insolvency Act, the purchaser or an incumbrancer must not only show that the transfer was for valuable consideration but it must also be pro good faith. Good faith is nee the transferee. It is not requ should act in good faith also. Mukherji, J.) RAMANANDA GHOSH, I.L.R. (1938) 2 Cal.

—S. 53 and Civil Pr

—Right to apply under S. 5 decree, by transferee of prelim. tion of transferor during its tendency—Official Receiver's objections as to fraudulent nature of transfer not

—S. 54—Limitation—Period of three months expiring during vacation—Application presented on

(Niyogi, J.) BALKISAN v. BHANUPRASAD.

178 I.C. 479—A.I.R. 1938 Nag. 454.

—S. 54—Undue preference—Inference of—When can be drawn.

Per Mukherji, J.—Obiter: The question whether the transfer in favour of a creditor was made by the give him an undue preference rs, must be decided with reference ation of the debtor. If a debtor property on the eve of insolvency to consideration being the past debt an inference of undue preference drawn. But if the debtor approaches

PROV. INSOLVENCY ACT (1920), S. 56

ence to the creditor. (*Derbyshire*)

J.) RAMANANDA PAL v. PAN

ILL.B. (1938) 2 Cal.

—S. 56—*Procedure—Appointment of pleader appearing for party as receiver—Justification of.*

It is objectionable to appoint as Receiver a pleader who represents a party in the proceedings by allowing him to throw up his brief in the middle of the case

PROV. INSOLVENCY ACT (1920), S. 68.

ate of an
appoints
administer

178 I.O. 259 = A.I.R. 1938 Lah. 264.

—S. 59—*Scope—Suit by adjudicated insolvent pending insolvency—Competency. See PROVINCIAL INSOLVENCY ACT, SS. 28 AND 59.*

40 Bom.L.R. 956.

. 63, 64 and 74—*Scope—Summary administration of Court—Transfer of petition for dis-*

on appeal before the receiver has completed the
trons or begun the distribution, it is not
ascertain how much he should be paid,
contingency contemplated by R. 13 of the
Rules cannot arise at all. In such a case all
Receiver can claim is a quantum meris
ordinarily is only 5 per cent. of the assets
him actually. (*Bose, J.*) LAXMAN PRASAD v.
PRASAD.

1938 N.L.J. 40 = A.I.R. 1938 Nag. 230.

—S. 58 (3)—*Applicability—Decree holder purchaser—If protected—"Good faith"—Notice of insolvency—If negatives good faith.*

The mere fact that a purchaser at an execution sale had notice of the insolvency proceedings against the debtor cannot connote want of good faith. A purchase made on the faith of a Court's order would negative all inferences of bad faith. There is no difference in this respect between a stranger purchaser and a decree-holder purchaser. (*Venkataramana Rao, J.*) VENKATA SIVAYYA v. SURYANARAYANA. 48 L.W. 279 = 1938 M.W.N. 841 = A.I.R. 1938 Mad. 906.

—S. 59—*Estate vesting in Official Receiver—Other receivers appointed to help Official Receiver—Official Receiver, if can by himself maintain suits,*

ACT, SS. 63, 64 AND 74.

1937 M.W.N. 1222

—S. 66 (2)—*Maintenance of insolvent—Power of Court to reserve portion of his immovable property.*

S. 66 (2) of the Provincial Insolvency Act contemplates only a money allowance being given for the maintenance of the insolvent or his family. It does not empower the Court to reserve a portion of the immovable property of the insolvent for his maintenance. (*Chand, J.*) LADHA MAL v. TAJA. 63 F. 2 203

—Ss. 68 and 4—*Applicability—Sale of property under orders of Court—Selling under—Time.*

S. 68 is intended to apply to provide an appeal to the Court against an act of the receiver and not an appeal to the Court against acts of the Court made by the receiver. Where a receiver considers that the property of which the insolvent is the owner is to be sold, and merely invites bids under the

PROV. INSOLVENCY ACT (1920), S. 74.

the Court, and refers the bids received to the Court which accepts the highest bid, the sale, if a sale be held to have taken place, is not the act of the receiver and S. 68 does not apply to such a case. An application to set aside such sale does not therefore fall under S. 68. It falls under S. 4 and is not barred by time although filed

—S. 74—Duty of Court under—Insolvency petition—Power of Judge to transfer to Official Receiver for disposal—Enquiry into debts and hold and determine. *See* PRO ACT, SS. 63, 64 AND 74.

—Ss. 75 and 25—Order dismissing creditor's application for adjudication of debtor—Appeal.

Insolvency Act
adjudication
5 of that Act.
JH DIAL.
40 P.L.B. 433.

—S. 75—Order of District Judge making com-

for costs. *See* C. P. CODE, S. 151.

40 Bom. L.R. 1025.

—S. 75 (1)—Second appeal—Scheme propounded

In question allows a higher rate of interest on the debts than is permissible under the Act. Such a question is

PROV. INSOLVENCY ACT (1920), S. 78.

tion can be taken as the competency of the appeal. (*Yorke, J.*) SAGARMAL HANOMAN PRASAD v. ABDUL RAHMAN.

173 I.C. 631—1938 O.A. 201—
1938 O.L.R. 125—1938 O.W.N. 230—
10 B.O. 225—A.I.R. 1938 Oudh 101.

—S. 75 (3)—Appeal—Refusal to modify terms of order—If appealable.

strict Judge refused to modify the terms of order of his predecessor, the order of refusal is appealable with the leave of the District Court or the High Court. As there had been no decision on that leave to appeal should be

ow and Abdul Rahman, J.J.)
JDI v. OFFICIAL RECEIVER,
BELLARY.

176 I.C. 48—11 B.M. 11 (1)—
1938 M.W.N. 111 (1)—A.I.R. 1938 Mad. 461.

—S. 75 (3)—"Person aggrieved"—Creditor aggrieved by order of District Court—Appeal to High Court without first applying to Official Receiver to appeal—Competency.

The words "any such person aggrieved" in S. 75 (3) also include a creditor who is aggrieved by an order of

ency.

An appeal to the High Court under S. 75 (3) of the Provincial Insolvency Act cannot be held to be incompe-

4 B.R. 161—18 Pat.L.T. 839—1937 P.W.N. 865—
A.I.R. 1937 Pat 665.

proved by the creditors is competent. (*Worton and Varma, J.J.*) MAKHAN LAL GOVINDRAM v. BHAGWAN SINGH MISTRI, 17 Pat 201—19 Pat.L.T. 821—
A.I.R. 1938 Pat. 471

—S. 75 (3)—Admission of appeal—If tantamounts to grant of leave.

annulment order. (*Norman.*) ALLAH DIN v. GHISU LAL.

1937 A.M.L.J. 101.

—S. 78 (2)—Applicability—Period of 12 years under S. 48, C. P. Code—If "period of limitation"—Exclusion of time during which insolvency was pending.

The applicability of S. 78 (2) of the Provincial Insol-

PROV. INSOLVENCY ACT (1920), S. 73.

enough' to affect and control the computation of the period of time limited, whether by S. 48, C. P. Code the Limitation Act or any other statute. The period of 12 years fixed by S. 48, C. "limitation" within S. 78 (2) vency Act and therefore in ex years limited by S. 48, C. which the insolvency of the ing must be excluded. (A. Jyengar, J.) KALYANASUNDARAM PILLAI v. VAITHILINGA VANNIAR. 48 L.W. 881= 1938 M.W.N. 1255.

—S. 78 (2)—Joint decree against several persons—Execution against one—Subsequent insolvency of same—Execution against others—Limitation—If saved. See LIMITATION ACT, ART 162, EXPL. I. 1938 P.W.N. 397.

—S. 79—Calcutta High Court Rules R. 9—Creditors served with notice of hearing of application for discharge—If become parties to proceeding—Death

PROV. S. O. C. ACT (1887), S. 17.

per directions previously given. When this mandatory provision is not complied with, and a suit is restored the power of the High Court to interfere under S. 25 of the

1938 A.W.R. (H.C.) 753=1938 A.L.J. 1058.
—Ss. 17 and 25—Security out of time and opposed to directions of Court—Setting aside of ex parte decree—Legality—Interference in revision.

Where an applicant in set aside an ex parte decree, not only failed to furnish the security within the time prescribed but furnished a security different from that ordered to be furnished, a Court if it sets aside the ex parte decree under such circumstances, its order is both illegal and without jurisdiction and can be set aside in revision. (Jaisal, J.) MARGHA BHAI v. BIRENDER

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of the Court to condone any failure on the part of an applicant to carry out those provisions deposit the decree amount or obtain permission to file adequate security bond. (Mulla, J.) MOHAMMAD YASIN.

1938 A.W.R. (H.C.) 768.

—S. 17 (25)—S. 17, High Court, s. tion.

S. 17 of the stands now contains a mandatory provision. An applicant has got to do one of two things, that is either deposit the decree amount in Court or give security as

the decree or compliance with the judgment is to an judgment, and not in one to come future. A surety for the performance of the application to set aside the charged on the ex parte decree amount. (C.J. and Viswadev, J.J.)

MAGANLAL v. DAHYABHAI

178 I.C. 181=

parts decree is set aside. (Gore, J.) SETH DAWOOD v. RAM PRASAD, 172 I.C. 647=10 B.N. 222= 90 N.L.J. 266=A.I.R. 1938 Nag. 76

S. 25—Interference—Prohibition—In 1938—Agreement in trial regularly conducted—Has powers to interfere on merits.

S. 25 of the Provincial Small Cause Courts Act ought not to be construed as giving parties an appeal on points of law. The object of S. 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision is according to law. Wherever the High Court is satisfied that the unsuccessful party has not been

not have been satisfied, or where the unsuccessful party has not been given a proper opportunity of being heard or where the burden of proof has been placed on wrong shoulders, the High Court can interfere.

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1938 A.L.J. 742—1938 A.W.R. (H.C.) 434.

—S. 25—Remedy under Availability—Discussion on a preliminary issue.

A Court can only act under S. 25 of the Provincial Small Cause Courts Act, where a decree or order has been passed. So when after deciding the issue as to limitation, the case is adjourned to a future date, for

dictation—Objection not taken—Interference.

The fact that parties did not take the objection as regards the absence of jurisdiction, might in certain circumstances incline the Court of revision to refuse to

PROV. S. C. C. ACT (1887), Sch. II, Art. 28.

removed by the defendants from certain trees in the claim or right. Such a suit is of small causes. (*Beckett, J.*)

RAHIM BAKHSI.

40 P.T.R. 770—A.I.R. 1938 Lab. 759.

*Scope—Claim for interest
—Jurisdiction of Small*

—Sch. II, Art. 19—Suit for refund of tax with a prayer to declare tax illegal—Nature of.

A suit for refund of license fee on the ground that it is illegal is cognizable by a Court of Small Causes though it is coupled with a prayer to declare the tax illegal. The test of cognizability depends on the construction of the plaint in the case. If the main relief is

(*Nizogi, J.*) RAMDULARE v. MUNICIPAL COM-
MITTEE, AKOLA. 175 I.C. 691=11 B.N. 1=

A.I.R. 1938 Nag 398.

—Sch. II, Art. 28—Applicability—Suit by hus-

of the rent and ejection of defendants. The rent deed was executed by only one of the defendants and the others were implicated on the ground that they were in possession as members of a joint family along with the executant of the rent note. These defendants denied the title of the plaintiff.

178 I.C. 503=1938 M.W.N. 833=48 L.W. 290=
A.I.R. 1938 Mad. 864=(1938) 2 M.L.J. 402.

—Sch. II, Art. 28—Jurisdiction of Small Cause Court—Position of defendant, if material.

The question of jurisdiction depends entirely on the allegations made in the plaint and it is immaterial

PROV. S. C. ACT (1887), Sch. II, Art. 31.

whether the defendant is a rival claimant to the estate or merely a person in wrongful possession. (*Almond, J. C.*) ZAMIN SHAH v. MUKAMIL SHAH.

178 I.C. 31=A.I.R. 1938 Pesh. 79.

Sch. II, Art. 31—*Suit for account*—*Suit by agent against principal for specific amount due*

Held,
the sum of
that the
falling on
excluded
Court.

Held, further, that for the purpose of whether the suit was one for an account, it makes no difference whether the defendant is the agent or the principal. (*Venkatadri v. Abdul Rahiman Rowther v. Jamaluddin Sahib & Co.*)

176 I.C. 806=47 L.W. 793=

1938 M.W.N. 707=11 R.M. 180=

A.I.R. 1938 Mad. 799=(1938) 2 M.L.J. 76.

Sch. II, Art. 31—*"Suit for accounts"*—*Suit by agent against principal for specific sum of money due on particular dealings—If one for accounts.*

A suit for accounts is a special form of suit. It does not mean that whenever accounts have to be looked into in order to ascertain the amount due by one party to the other that the suit should be technically called a suit for accounts. A suit for a specific sum of money alleged to be due to the plaintiff by the defendant in regard to certain dealings, the plaintiff being merely

A.I.R. 1938 Mad 707=(1938) 2 M.L.J. 112.

Sch. II, Art. 31—*Suit for mesne profits—Jurisdiction of Small Cause Court.*

A suit for recovery of mesne profits, even though for a sum ascertained comes within the purview of Art. 31

PUBLIC GAMBLING ACT (1867), S. 4.

Cause Courts Act. (*Addison and Din Mohammad, J.J.*)

SHAR NATH v. OFFICIAL RECEIVER.

I.L.R. 1938 Lah. 341=177 I.C. 408=11 R.L. 312=

40 P.L.R. 196=A.I.R. 1938 Lah. 219.

Sch. II, Arts. 55 (ii) and 4—Applicability—

Suit for price of fruit removed in assertion of right See PROVINCIAL SMALL CAUSE COURTS ACT SCH II

son his proportionate share is not strictly a suit for contribution as contemplated by Art. 41 of Provincial Small Cause Courts Act and hence is cognizable by the Small Cause Court. (*M. B. Niyogi, J.*) JAGAN SETIA v. SONA. 1938 N.L.J. 125.

PUBLIC DEMANDS RECOVERY ACT (III OF 1913), S. 20—*Sale of portion of holding—Title of purchaser.*

Where in execution of a certificate issued under the Public Demands Recovery Act, a portion only of a holding is sold, the purchaser acquires only the right, title and interest of the certificate debtor, and not the entire holding. (*Sen, J.*) RAM SANKAR v. JOGENDRA NATH. 43 C.W.N. 20.

Sen, J.) RAM SAN-

43 C.W.N. 20.

I OF 1867), S. 4—

Essentials for conviction.

The only crime under the Public Gambling Act is being found in the place where gambling is going on and it is no offence to gamble in a public place as long as a person is not found doing it. The persons not found in the place where gambling was going on cannot

1197

PUBLIC GAMBLING ACT (1867), S. 5.

S. 526, Cr. P. Code, would not apply. (*Pollock, J.*)
 KHEMCHAND GIRDHARILAL v. EMPEROR.
 171 I.O. 1007=39 Cr.L.J. 55=10 E.N. 150=
 A.I.R. 1938 Nag. 63.

S. 5—Search warrant—Issue of—Conditions—
 Inquiry—Necessity—Credible information—Suffi-
 ciency.

The Public Gambling Act does not require the Magis-

trate to
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 have cre
 pound
 AL v. I.
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1938 A.W.

S. 5—Sea

information—If must be stated.

S. 5 of the Public Gambling Act merely requires that
 the search warrant should be issued after the receipt of
 credible information. The warrant is, therefore, not
 invalid if it does not state that it was issued after the
 receipt of credible information. (*Pollock J.*) KHEM-
 CHAND GIRDHARILAL v. EMPEROR. 171 I.O. 1007 =
 39 Cr.L.J. 55=10 E.

S. 5—Search

of house to be searched

by name of owner or occupant of house.

A warrant for the search of a house is not invalid
 merely because its boundaries are not specified and
 particularly so where it is described by the name of the
 owner or occupier and where there is no likelihood of
 anybody being in doubt as to the identity of the house

S. 6—Gaming house—Presumption

arising—Nature and extent of.

There is a presumption under S. 6 of

of gaming in the form of *Satta*

house, it has to be presumed that

house, which includes the presumpt

for the profit of the owner or occupant. (*Radhey Lal v. Emperor*)

LLR. 1938 All 422=175 I.C. 233=10 E.A. 657=

1938 A.Cr.O. 17=1938 A.L.R. 389=

39 Cr.L.J. 548=1938 A.W.R. (H.C.) 147=

1938 A.L.J. 222=A.I.R. 1938 All 252

S. 6—Persons present during game—Presump-

tion—Rebuttal.

When a gambling game is being played there is a
 strong presumption that the persons present are taking
 part in it, but when bets are being made at intervals
 and legitimate business is being carried on throughout,

sons
 their
 J.)

59 Cr.L.J. 55=10 E.N. 150=171 I.O. 1007=

A.I.R. 1938 Nag. 63.

S. 8—Confiscation of money—Legality.

S. 8 of the Gambling Act lays down clearly that all
 money found in a gaming house may be confiscated and
 hence in such a case there can be no question whether

PUNJAB ACTS.

that money is an instrument of gaming or not. (*Allsop, J.*) RADHEY LAL v. EMPEROR.

LLR. 1938 All 422=175 I.C. 233=10 E.A. 657=

1938 A.Cr.O. 17=1938 A.L.R. 389=

39 Cr.L.J. 548=1938 A.W.R. (H.C.) 147=

1938 A.L.J. 222=A.I.R. 1938 All 252

S. 13—Public place—Meaning of—Grate, if a public place.

its being
 place is a
 he public-
 in Indian
 id there is
 wishes to

from it, the place was held to be a public place within
 the meaning of the Act. (*Allsop, J.*) EMPEROR v.
 BALU SINGH. LLR. 1938 All 348=174 I.C. 556=
 1938 A.Cr.O. 10=1938 A.L.R. 299=39 Cr.L.J. 441=
 10 E.A. 597 (1)=1938 A.W.R. 218 (H.C.)=
 1938 A.L.J. 102=A.I.R. 1938 All 209.

S. 13—Seizure—Order confiscating money found

conviction under the

confiscation of the

accused. Such an

order is clearly in the teeth of the provisions of S. 13
 of the Act and is illegal. (*Yerke, J.*) HARIHAR v.
 EMPEROR. 172 I.O. 793=1938 A.L.R. 40=

10 E.A. 434 (1)=39 Cr.L.J. 227=

1937 A.W.R. 960 (1)=1937 A.L.J. 973 (1)=

A.I.R. 1938 All 11.

S. 13—Seizure of money, if justified under—
 Money found on the phar—Disposal—Cr. P. Code,
 S. 517.

on the phar and it was

A.I.R. 1938 All 209.

PUNJAB ACTS, RULES ETC.

Punjab Alienation of Land Act.

Colonisation of Government Lands Act.

Courts Act.

Debtors Protection Act.

Excise Act.

Land Revenue Act.

Laws Act.

Limitation (Custom) Act.

Municipal Accounts Code.

Municipal Act.

Municipal Works Rules.

Pre-emption Act.

Pure-food Act.

Redemption of Mortgages Act.

Regulation of Accounts Act.

Relief of Indebtedness Act.

Sikhs Gurdwaras Act.

Tahsildars Rules.

Tenancy Act.

PUNJAB ALIENATION OF LAND ACT (XIII OF 1900), S. 2 (3)—Land—Onus of proof.

The onus of proving that the property in dispute is 'land' as defined in S. 2 (3) and therefore attachment and sale is on the judgment on the decree-holder. (*Tek Chand, J.*)

v. KHAIR DIN.

177 L.O. 434—

A.I.R. 1938 Lah. 458.

PUNJ. COL. OF GOVT. LANDS ACT (1912), S. 21

Held, that the words 'the Collector of the Lyallpur

defined in the Punjab Alienation of Land Act. (*Tek Chand, J.*) *MAGHI MAL v. MOHAMMAD ALI.*

11 B.L. 311=40 P.L.R. 303=

A.I.R. 1938 Lah. 458.

enjoying the order benefits of the Act in that behalf. (*Ram Lal, J.*) *LAHAURI RAM v. AMAR CHAND.*

of the Commissioner and that any transfer made without such consent in writing was void.

—S. 14—Sale in favour

55.

er

not a member of an agricultural tribe, the alienation is not valid. If sanction of the Deputy Commissioner has not been given in advance, it takes effect under S. 14 of the Punjab Alienation of Land Act as a usufructuary mortgage permitted under S. 6 of the same Act. If the Commissioner refuses sanction, the alienation is void. The alienor when sued under the law it automatically mortgage for such term, not exceeding 12 years, as the Deputy Commissioner fixes. It is that S. 65 of the Contract Act that an alienor is not entitled to sue. (*Addison, Ag. C.J. and Din Mohammad, J.J.*) *DALIP SINGH v. JAGAT SINGH.*

A.I.R. 1938 Lah. 721.

—S. 21 (a)—Occupancy rights conferred on widow in land originally held by her husband as *tahud kha-*

PUNJAB COLONIZATION LANDS ACT (V OF 1912)—

tary rights—Right of female tenants—Lower Chenab

recognition of the Government, but it definitely does not

BIBI v. FIR BAKHS.

17 Lah L.T. 19.

SHAN.

A.I.R. 1938

—Ss. 3 and 19—'Collector of District—If included in the Settlement Officer having powers of Collector.

Where the Commissioner by letter empowered 'the Collector of the Lyallpur District' to sanction sales under S. 19,

—S. 21 (a) and (b)—

tenants.

S. 21 (b).

definition, must

the case of

de-

cover

to

PUNJAB LAND REV. ACT (1887), S. 141.

PUNJAB MUNICIPAL ACT (1911), S. 80.

maintainable under § 117 (1), Land Revenue Act (*Tek Chand and Abdul Rashid, Jf.*) JAMALA v. MOHAMMADA. 40 P.L.R. 524=A.I.R. 1938 Lah. 202.

—S. 141—Execution of mortgage decree by Revenue Officer—Procedure.

The procedure to be followed by a Revenue Officer

Financial
Government
INDAR RAJ

the dismissal of the suit acquired the property for himself by purchasing it from the alienee, the case does not come within the purview of S. 8 of Act I of 1920. No decree having been obtained in the suit, nothing could enure for the benefit of the other reversioners. Nor is the case covered by S. 90 of the Trusts Act. The other reversioners, therefore, have no right to the property purchased. (*Addison and Din Mohammad, Jf.*) MOHAMMAD MALIK v. ALI MOHAMMAD.

40 P.L.R. 108=A.I.R. 1938 Lah. 305.

of a non proprietor to sell the site of the house which he occupies has to be decided under S. 6 which is subject to S. 7 of the Act (*Beckett, J.*) CHUNI LAL v. BEANT SINGH. 178 I.O. 551=40 P.L.R. 634=A.I.R. 1938 Lah. 642

—S. 5—Mahomedan Law—*if modified by Limitation Act.*

Per Young, C.J. and Bhide, contra.—S. 5 of the Punjab L. that even when both the parties

OF STATE v. B. A. MALAK.

178 I.O. 153=

A.I.R. 1938 Lah. 282.

PUNJAB MUNICIPAL ACT (II OF 1911), S. 3 (13) (a)—'Street'—Private site used by public.

Where a site which belongs to a private individual has always been in use of the residents of the mohalla as an open space or a common courtyard and the

fed by the Limitation Act, as S. 3 of that Act applies

A.I.R. 1938 Lah. 619.

—S. 41—Removal of municipal employee—Power Executive Officer or President of Committee.

here is no provision in the Punjab Municipal Act or Executive Officers Act nor in any rule or bye law under these enactments which can authorize the Executive Officer or the President of the Municipal Committee to arrogate to themselves the powers of removing a municipal employee. (*Addison and Din Mohammad, Jf.*) SECRETARY OF STATE v. B. A. MALAK.

178 I.O. 153=A.I.R. 1938 Lah. 282.

—Burden of proof.

created by S. 5 of the Act in favour of custom; on the contrary, it is only when the custom is established that it is to be the rule of decision. (*Tek Chand and Abdul Rashid, Jf.*) MOHAMMAD NAWAZ v. KAURA RAM.

178 I.O. 74=40 P.L.R. 565=

A.I.R. 1938 Lah. 166

PUNJAB LIMITATION (CUSTOM) ACT (I OF 1920) S. 8—Sustaining contention alienation

but
never

—Ss. 80 and 81—Terminal tax—Servant introducing goods without paying full tax—Liability of master to pay deficiency.

Where goods entrusted to a servant ostensibly pass through the terminal tax post as belonging to and carried by the master, the Municipal Committee can call upon the latter to pay the deficiency in the payment of the

PUNJAB MUNICIPAL ACT (1911), S 81.

or not (*Coldstream, f.*) MIAN MOHAMMAD ALLAH BUX v. MUNICIPAL COMMITTEE, LALLPUR.

LLB. (1938) Lah 251-177 LC 413-
Cr L.J. 872-11 E L 316-40 P.L.R. 1025-
A.I.B. 1938 Lah 627.

—S 81 (as amended in 1933)—Scope of—Recovers under—Conditions necessary—Use of word 'rent' if enough.

... but only a sum that is claimable by the

173 LC 211-39 Cr L.J. 286-10 E L 418-
A.I.B. 1938 Lah 29.

—S 195—Action under—When can be taken—Action under S 195 of the Municipal A taken only if notice is delivered within six

—S. 195—Notice by Municipal Committee—Jurisdiction of Civil Court.

If the notice issued by the Municipal Committee falls within the purview of S. 195 of the Punjab Municipal Act, then the Civil Courts have only remedy of the aggrieved under S. 225. If, however, it is within the purview of S. 195 a then the jurisdiction of the Civil Court is ousted. (*Abdul Rashid, f.*) FAZLU v. MITTAR, ROHTAK. 40 P.L.R. 980.

PUNJAB MUNICIPAL WORKS RULES (1925),

Under S. 15 (b) of the Pre-emption Act, the right of pre-emption in respect of agricultural land is conferred

PUNJ. REDMPN. OF MORTGAGES ACT (1913)
S 12

RASH DAYAL, 40 P.L.R. 508-
A.I.B. 1938 Lah 616.
as by testator—Legatee's right to

ed at any moment by the testator it is therefore doubtful whether a be a heir within the meaning of so as to be entitled to pre-empt a

(*Addition and Din Mohammad, f.*) ALLAH DIN v. PRABH DAYAL, 40 P.L.R. 508-
A.I.B. 1938 Lah 646.

—S. 22 (1) and (5)—Security bond becoming void—Power of Court to ask for cash.

Having exercised the option between cash and security bond by asking for security bond, the Court cannot ask for cash in case the security bond submitted becomes void. Court should ask for another security bond instead.

(*f.*) ZAMAN MEHDI KHAN v. HAYAT KHAN, L.O. 452-11 E L 332-40 P.L.R. 758 (1)-
A.I.B. 1938 Lah 452.

. 22 (5) (b)—Extension of time—Power of Court.

S. 13 (1) (a)—Adulterated ghee lying at shop of commission agent—Sale—Presumption.

A commission agent who has purchased adulterated

... application for redemption within time—Deposit made after limitation—Redemption, if can be allowed.

The provisions of S 4 of the Redemption of Mort-

I.L.B. (1938) Lah 488.
—S. 12—Disposal of petition without touching merits—If without jurisdiction.

A.I.B. 1938 Lah 638.
—S. 12—Order of dismissal—Suit not brought within one year—Effect of.

PUNJ. REDMPN. OF MORTGAGES ACT (1913),

S. 12.

PRABHU MAL v. CHANDAN.

40 P.L.R. 40.

A.I.R. 1938

—S. 12—*Person aggrieved—Who is.*Any person against whom any order
Ss. 10 to 11 is a person aggrieved within tS. 12. (Addison, Ag.C.J. and Din J.)
PRABHU MAL v. CHANDAN.

40 P.L.R. 40.

A.I.R. 1938 Lah. 638.

PUNJAB REGULATION OF ACCOUNTS ACT
(IOF 1930)—*Applicability—Loan advanced before
Act—Repayment after Act.*

The Punjab Regulation of Accounts Act does not
apply when a repayment is made after the commence-
ment of the Act in respect of a loan advanced before
that Act came into force, and the creditor is therefore
not required to com
Act. (*Bhida, J.*)

—*Trader—Mo*

A money lender c
definition of the wo
Regulation of Accou
PERSHAD v. RAM E

176 I.O. 924.

A.I.R. 1938 Lah. 322.

—S. 2—*'Loan'—Defendant trader at time of loan
and of striking of balance.*

Where the defendant was a trader at the time when
the loan was originally advanced as well as at the time
when the balance was struck by him the transaction is
not a 'loan' as defined in S. 2 of the Punjab Regulation
of Accounts Act. (*Tik Chand, J.*) BADRI PRASAD
v. HIRA LAL.

40 P.L.R. 471.

A.I.R. 1938 Lah. 322.

Relief of Indebtedness Act, certain property of the
applicant is leased for a period of 12 years, the agree-
ment is tantamount to a lease and, therefore, requires
registration under S. 17 (1) (d) of the Registration Act.
(*Bhida, J.*) JHINDA RAM-FATHE CHAND v. MAHNI.

40 P.L.R. 567 = A.I.R. 1938 Lah. 685.

—S. 21—*Plea of lack of jurisdiction in Board—
Cognizance by Civil Court—If barred.*

Obiter.—S. 21 of the Punjab Relief of Indebtedness
Act only debars a Civil Court from taking cognizance
of certain classes of suits, and there is no reason why a
Civil Court should not be able to take cognizance of a
plea of lack of inherent jurisdiction in the Board to pass
a certain order. (*Bhida, J.*)
CHAND v. MAHNI.

—S. 22—*Scope—Debt Com-
order of fine for contempt of
clon.*

S. 22 of the Punjab Relief of
only to orders passed in pursuanc
Debt Conciliation Board passes a
tempt
but it i
S. 439.

An
of S. 2
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bound w

PUNJ. REL. OF INDEBTEDNESS ACT (1934),

S. 34.

—S. 25—*Maintainability of application to Board
—Jurisdiction of Civil Court to determine.*

Any other Court is not competent to determine those
matters which have been placed exclusively within the
jurisdiction of the Board, nor can it be urged that so
long as the Board has not determined those matters, any
other Court can continue the proceedings before it in
relation to them. The sole jurisdiction to determine

the Proviso to S. 9. For an independent tribunal, there-
fore, to determine whether a certain application lies to
the Board or not would be clearly to encroach upon its
jurisdiction and to run counter to the entire scheme
propounded in the Act itself. (*Addison, Ag.C.J. and
Din Mohammad, J.*) GOPAL DAS v. KUSHI RAM.

A.I.R. 1938 Lah. 702.

—S. 26—*Decision of Board as to competency of
application—If affects question of extension of time.*

the application is incompetent or otherwise, cannot
affect the question of the extension of limitation under
S. 26. (*Dalip Singh, J.*) WARYAM SINGH v. PHERU.

A.I.R. 1938 Lah. 780.

—S. 31—*Arrest of judgment-debtor—When justifi-
ed.*

Under the Act, arrest is not possible unless there has
been some contumacious conduct on the part of the
judgment debtor and mere inability to pay does not
justify arrest. (*Dalip Singh, J.*) PRABHU DYAL
BALKISHAN DASS v. BHONDU MAL.

40 P.L.R. 618 =

A.I.R. 1938 Lah. 692.

—S. 34—*Contumacy of judgment-debtor—Burden*

cast upon
the record
to draw its
own in the
n may pos-
sible by the
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that be
will merely
to prove his
that the judg-
ischarging his
the onus falls
or not having
a Court has
t property for
rs no kind of
that he has

PUNJ. REL. OF INDEBTEDNESS ACT (1934), S. 31.

without just cause contumaciously refused to pay the amount of the decree in whole or in part. The mere fact that a judgment debtor admits that he has certain crops to be harvested and that he will pay the decretal amount out of the money realized from such crop but

PUNJ. SIKH GURDWARAS ACT (1925), S. 5.

S. 36—Scope of—If retrospective.

S. 36 of the Punjab Relief of Indebtedness Act, merely alter retrospective
Mahomed, J
MOTI LAL.

UD DIN v. KHAMBATTA.

40 P.L.R. 857=

S. 35—Applicability—If but attached after Act.

S. 35 of the Punjab Relief of Indebtedness Act applies where a house, although mortgaged with possession prior to the Act, is attached after into force. (*Dobson, F.C.*) **IMAN DIN**

S. 35—Liability of house to attach

Under S. 35 of the Punjab Relief of Indebtedness Act, the onus of proving the liability of attachment rests on the decree holder.

IMAN DIN v. SHIB DAYAL.

S. 36—Applicability—Adjustment, adjusting price

for having the adjustment certified had expired, before the Act came into force. It is, therefore, open to the

word 'control' as distinguished from management, its in the term 'control' the idea of (*Addison and Din Moham-*
GURDWARA PARBHANDAK
SINGH.

A.I.R. 1938 Lah. 734.

(*Colditram and Jai Lal, J.J.*) **LOCAL COM-**
GURDWARAS v. SARDUL SINGH.

A.I.R. 1938 Lah. 76.

3 (1) and (3)—Equitable mortgage—Duty of applicant to plead.

Under S. 3 (1) of the Act, it is not incumbent on the

S. 36 of the Punjab Relief of Indebtedness Act had repealed O. 21, R. 2, Sub R. (3) so far as the Punjab was concerned. The result is that it is now the executing Courts in Punjab, whenever a filed payment is pleaded in bar of execution, the question and decide it, even though the debtor has not taken advantage of the permission by sub-R. (2), R. 2 of O. 21, C. (*Addison and Din Mahomed, J.J.*) **MURLI DHAR v. BASHESHA LAL MOTI LAL.**

I.L.R. (1938) Lah. 264-177 I.O. 487-

11 R.L. 330 (2)-40 P.L.R. 14-

A.I.R. 1938 Lah. 126.

A.I.R. 1938 Lah. 129.

S. 5—Petition under—O. 1, R. 8, Civil Pro-

prejudice. (*Young, C.J., Bhile and Din Mohammad, J.J.*) **MASJID SHAHID GANJ v. SHIROMANI GURDWARA PARBANDHAK COMMITTEE, AMRITSAR.**

175 I.O. 945-11 R.L. 91-

40 P.L.R. 319-A.I.R. 1938 Lah. 363 (F.B.),

PUNJ. SIKH GURDWARAS ACT (1925),

—S. 25-A—Scope—If excludes jurisdiction of ordinary Courts.

S. 25 A is an enabling section and not an exception. It is intended to give the parties a remedy on a cheap stamp within a year of before the Tribunal itself. It however does not take away the jurisdiction of the ordinary Courts. The party in whose favour a declaration is made by the Tribunal as to the ownership of land sue for its possession in order of the Court. (Singh and Skemp, J.J.)

DODA v. GOBIND DASS.

11 R.L. 348

—S. 29—Shiromani G

mittee—Unauthorized seizure of jurisdiction by—If subject to control of Court.

Unauthorized seizure of jurisdiction would be subject to the control of Courts and an act done which is not within the competence of the Shiromani Gurdwara Parbandhak Committee to do, would be ignored. (Addison and Din Mohammad)

MANI GURDWARA PARBHANDAK

GURDIAL SINGH, A.I.R.

—S. 142—Member of Gurdwara—Charge of negligence—Act.

(Jas Lal and Dalip Singh)
SHIROMANI GURDWARA
AMRITSAR.

PUNJAB SUBORDINATE

—Order of officer—

Disciplinary cases in which punishment of any nature is inflicted require an order by the officer himself. Where there is nothing leading to the formulation of an order,

case, but the final and formal order is issued by the nature of the officer and it is not sufficient to draft and issue. (Garbett, F.C.)

LAL v. EMPEROR.

—Punishment—Statement of facts—

errors in the past now corrected. (Garbett, F.C.)

HAPPAWARI LAL v. EMPEROR.

17 Lah. L.T. 33.

to the mortgagee on the expiry of limitation is binding on the landlord. (Bhide, J.)

DEVI DAWALA v. COURT OF WARD. 40 P.L.R. 210 = A.I.R. 1938 Lah. 488.

acquired title
recognizable by a
(Bhide, J.)

77 I.C. 703 =
1938 Lah. 82.

—Period for
occupancy

rights—Mortgagee losing his rights under S. 59—
Mortgagee's rights, if retained.

of limitation for the
occupancy right under

mod. J.) COURT OF
40 P.L.R. 948 =

A.I.R. 1938 Lah. 676.

—Succession—

PUNJAB SUBORDINATE

Recovery statement—Tahsildar signing

to be incorrect—Liability to departmental

A Tahsildar who joined a raiding party

house of a suspected counterfeit coiner

the police and signed a recovery statement knowing

until all the descendants of the joint tenants have be-

is not exhaustive
the heirs of all the
It is obvious that

PUNJAB TENANCY ACT (1887), S. 59.

come extinct, the tenancy does not revert to the landlords. (*Abul Rasheed, J.*) MT INDO v. JAGTA.
177 I.O. 870—40 P.L.R. 232—A.I.R. 1938 Lah. 611.
—S. 59 proviso—"Occupied"—Interpretation.

The word 'occupied' in the proviso to S. 59 of the Tenancy Act implies some control over the land by whatever name it may be expressed in law. It may not necessarily be actual possession. It may be in some cases constructive possession. But where a person has neither physical control over the property nor is in a position to exercise any dominion over the property through his tenants or servants nor in a position to assume physical control over it, he cannot be said to be

(*Addition and Din Mahomed, J.*) ATTE v. FAIZ MOHAMMAD L.R. (1938) Lah. 411—177 I.O. 445—
11 B.L. 325—40 P.L.R. 269—
A.I.R. 1938 Lah. 435.

—S. 77—Suit by collateral of last occupancy tenant for possession against landlord—Plea by landlord that tenancy had been abandoned by deceased tenant—Jurisdiction of Civil Court

Suits by collaterals of the last occupancy tenant claim—

Civil Court. (*Tek Chand, J.*) MULA v. ROSHAN,
40 P.L.R. 111.

—S. 77 (3) (d)—Occupancy rights of judgment-debtor sought to be attached and sold—Jurisdiction of civil court to decide whether rights fall under S. 5 or Ss. 6 and 7.

A Civil Court has jurisdiction to decide as to whether the occupancy rights held by a judgment debtor, which are sought to be attached and sold in execution of a decree, fall under S. 5 or Ss. 6 and 7. Such a suit is

to determine in the last resort the jurisdiction of a Court of special jurisdiction on the fact that the "dispute or matter" is arise incidentally in a suit of the civil court in such a clause as (j) is not sufficient to exclude it from the jurisdiction of the Civil Court found that haq buha is leviable on land and is therefore a village cess and a for declaration that he is not liable alleging that he does not come to people liable to pay the same, the Civil Court is barred as the matter in dispute is the very

Y. D. 1938—77

RAILWAYS ACT (1890), S. 47.

thing with respect to which a suit of the class described in Cl. (j) would be concerned as its subject matter. Cl. (j) cannot be interpreted as applying only to cases where the sole dispute is as to the amount payable. What Cl. (j) characterizes is a class of claim: whether a suit comes within it or not does not depend on the defence taken to the claim. The view that the Civil Court has jurisdiction where the plaintiffs claim a declaration that though certain cesses are payable, the plaintiffs are not liable to pay by reason of not belonging to classes from which payment can be claimed, is not a sound construction or application of the terms of S. 77 (3). The claim is exactly the counterpart of the suit

Lah. 173 Overr.; 16 Lah. 204—A.I.R. 1935 Lah. 150. Reversed. (*Sir George Rankin.*) MAHOMED NAWAZ KHAN v. BHAGATA NAND.

I.L.R. (1938) Lah. 514—175 I.O. 769—
1938 O.A. 541—1938 M.W.N. 762—
1938 O.L.R. 332—1938 O.W.N. 715—
1938 R.D. 682—68 C.L.J. 36—11 B.P.O. 35—
4 B.R. 745—1938 A.L.R. 645—40 P.L.R. 1040—
1938 A.W.R. (P.C.) 155—A.I.R. 1938 P.C. 219—

to discuss the question of *res judicata*, although it was raised before it, does amount to a material irregularity and justifies a reference by the commissioner. (*Dobson, F. C.*) SULTAN MAHOMED v. KARAM ILAHI.

17 Lah. L.T. 31,
RAILWAYS ACT (IX OF 1890), S. 13—Duty of Railway Company—Standing grass adjoining track—Fire line—Maintenance—Negligence in respect of Liability.

The Railway Company are bound not only to use due

allows dry
company is
B. & C. I.

1938 A.M.L.J. 25.
18—Goods taken un-
duly—Strict construc-

III the restricted sense that delivery had not been taken,

RAILWAY v. KASHI RAM 1938 A.M.L.J. 6.

RAILWAYS ACT (1890), S. 55.

—Ss. 55 and 56—*Notice of proposed sale by public auction—Sufficiency—Essentials.*
A notice of an intention to sell at a public auction

RANG. CITY MUN. ACT (1922), S. 239.

from small to bigger waggon—Consignor not informed—Liability for damages.

The exemption from liability afforded to the Railway k-note forms A and B is the Railway administration the ordinary route and once that route the protection ends. Where a Railway route diverted a which in its turn from a small to a re not intimated in the shape of liability by seek- the diversion and h of a necessarily

A.I.R. 1938 P.C. 12—(1938) 1 M.L.J. 83 (P.C.).

—*Meaning.*
5 and 56 must
even to them in
a public sale at

LAL MATRUMAL v. B. B. AND C. I. RAILWAY CO.

I L.R. (1938) All 888=178 I.C. 70=
1938 A L.R. 816=1938 A W.B. (H.C.) 557=
1938 A L.J. 855=A.I.R. 1938 All 561.

RANGOON CITY MUNICIPAL ACT (VI OF

*Notice to Mayor—Notice of
Mayor disallowing reso-
S. 45, Specific Relief Act*

—*Held*, there was no public auction in the ordinary meaning of the words; there was no sale in public; there was no opportunity for competitive bidding; in fact, what was done bore no resemblance to a "public auction." The Railway Company did not sell the coal in the manner prescribed by the sections, and therefore could not

the member filed a suit under S. 45, Specific Act, making it incumbent upon the Mayor to he moving of the censure resolution.

Held, that as the member had another adequate remedy under S. 13(2) Rangoon City Municipal Act, the remedy under S. 45, Specific Relief Act, was not available. (*Mosley and Shaw, J.J.*) **ALAN MURRAY v. L. H. WELLINGTON** 1938 Rang L.R. 83= 176 I.C. 158=11 R.R. 33=A.I.R. 1938 Rang. 18.

—*Railway Company, if exempted in case of fire under*

assessments in force of similar premises used for ghhourhood, that is, the "com- the value when there is direct value of the hereditament in 679, Rel. on. (*Roberts, C.J.*)

CORPORATION, LTD.

I.C. 406= Rang 173.

Ch. I, Chap XIV—

in Chap. XIV of Sch. Act made under the (or) (1) of the Act, municipal employee is

1223

RANG. S. O. O. ACT (1920), S. 25.

GURJAN SENG & CO. v. ASTER & CO.

R. N. PANDAY v. MOHAMMAD KASIM KHAN.
1938 Rang. L.R. 565

RECEIVER.

See also (1) C. P. CODE.

(2) PROVINCIAL INSOLVENCY ACT.

Appointment—Effect of—Property in possession of receiver—Suit for possession of—Sanction of Court—Necessity. See C. P. CODE, O. 40, R. 1.

Proprie
ACT, §

When

Court is
be considered as appointed on behalf of the property, and he is entitled to his ordinary commission and allowance, and also to a lien on the estate as against all persons interested in it for the balance, whatever it may be, that shall be found to be due to him on taking his account. A receiver, though discharged by the dismissal of the suit in which he was appointed, is entitled to a lien on the estate for all his just claims and allowances (*Roberts, C.J. and Dunkley, J.*) DAW OO. v. U BA THAUNG.
178 I.O. 30—A.I.R. 1938 Rang. 357.

Discharge—Official Receiver appointed to take charge of mining estate—Receiver negligent and incompetent—Appointment of Chartered Accountant in his place—Propriety.

The Official Receiver was appointed to take charge of leasehold property consisting of a mining estate. On a petition that the estate had not been efficiently administered and that the Receiver was not collecting the amounts properly due to the estate, the true position was not disclosed. Official Receiver. The Official Receiver with the 'statement of the most important items' however made a statement. He ignored the position which was the position which was the position.

Where before a receiver was discharged, objections were taken by the parties to the propriety of the entries in the accounts filed by the receiver and they were referred to a Commissioner and were dealt with by him and objections were also considered by the Court, it cannot be said that the propriety of the accounts was not considered by the Judge at the time when the receiver's

REGISTRATION ACT (1908), S. 2.

accounts were passed and he was discharged. However, the receiver is to be discharged to the receiver other

WARTI.

A.I.R. 1938 Cal. 597.

ative of parties in litigation—Execution by.

receiver—Procedure. See C. P. CODE, O. 40, R. 1.

40 Bom L.R. 932.

Power to appoint—Property of agriculturist.

Agriculturists in N. W. F. Province have the right to alienate their lands within specified limits and to enjoy the benefits of those lands. In execution of a decree held against an agriculturist, the appointment of a receiver for a limited period is not proper, public policy on the

176 I.O. 14—11 B. Peek, 4—

A.I.R. 1938 Peek. 30.

RECORD-OF-RIGHTS—Entries in—Presumption of correctness—Difference between successive records—Which to prevail.

There is a statutory presumption of correctness attaching to a record of rights; where the entries in successive records differ from one another, the presumption attaches to the latest entry. (*Rowland, J.*) SURYAMAL SARAF v. SRIRAM NAIDU.
19 Pat L.T. 622—1938 P.W.N. 532

Entries in—Value of.

The importance and weight of entries in the record of rights varies with the circumstances of each case. (*Davis, J.C. and Mahla, J.*) TAMILAM TACKCHAND v. MT. MIRAL.
176 I.O. 549—11 B.S. 22—

A.I.R. 1938 Sind 132.

Presumption of correctness—Challenging—Onus.

It is well settled that it is for the party challenging

TION.

1938 P.W.N. 810,

Ss. 2 (6)

leaves—

the trees
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ise. Such
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me out ofland" and so require registration under S. 17 (1) (d). (*Stone, C.J. and Puranik, J.*) MULJI SICKKA & CO. v. NURMOHAMMAD. A.I.R. 1938 Nag 377.

S. 2 (9)—'Crop'—Leaves of included.

The word 'crop' in S. 2 (9) might include leaves of a tree. (*Stone, C.J. and Puranik, J.*) MULJI SICKKA & CO. v. NURMOHAMMAD. A.I.R. 1938 Nag 377.

REGISTRATION ACT (1908), S. 17.

—Ss. 17 and 49—"Affecting immovable property"
—Deposit of title deeds as security for debt—Collateral
security letter in respect of—Admissibility without
registration. *See* T. P. ACT, SS. 58 (f) AND 59.

1938 M.W.N. 235.

—S. 17—Agreement to divide property of successful

A.I.R. 1938 Lah. 721.

—S. 17—Document of title—Report to revenue
officer relating to mutation—Registration, if necessary.

A report made to a subordinate land revenue officer
under the statutory provision relating to changes in the
land revenue records does not operate to create a title
for the purposes of S. 17 of the Registration Act.
(*Beckett, J.*) HAR CHAND v. HIRA LAL.

40 P.L.R. 682—A.I.R. 1938 Lah. 760

—S. 17—Document varying rent in respect of
existing tenancy requires registration.

A document which merely varies the rent in respect
of an existing tenancy requires registration if the earlier
lease is registered, or the deed itself might be compul-
sarily registrable because it purports to limit a right in
respect of an immovable property worth one hundred
rupees or upwards. (*Mukherjee, J.*) KAILASH
CHANDRA v. MADAN MOHAN. 42 C.W.N. 107.

—S. 17 (1)—Applicability—Document declaring
that executant had no title to property standing in his
name—"Declare", meaning of.

Where a document declared that the executant had
no title to the plots transferred to him and standing in
his name and that the title rested with somebody else for
whom the executant was only a benamidar, it is not a
document which creates a title but it only acknowledges
that the executant never did have any title. The word
'declare' in S. 17 of the Registration
in the same sense as 'create' 'assign'
It implies a definite change in the
property. (*Yorke, J.*) JAFAR ALI
RUNNISSA. 174 I.C. 378—1938 E.D. 499—

1938 O.L.R. 182—1938 A.W.R. (C.M.) 49—

10 B.C. 251—1938 O.W.N. 454—

1938 O.A. 348—A.I.R. 1938 Oudh 119.

—S. 17 (1)—Decree adjusting claim in execution
—Creation of charge on immovable property not subject-
matter of suit and worth more than Rs. 100—Registration
—Original decree itself—If to be sent for registra-
tion—Copy of decree—If may be sent.

A decree or order adjusting the claim of the judgment-
creditor in execution of his decree, whereby a charge is
created in his favour on immovable property, of the
value of more than Rs. 100, not the subject matter in
suit, which is compulsorily registrable under S. 17 (1) of

trar for being registered. The decree or order should
always remain on the records of the Court. (*Rangnagar
and Norman, J.J.*) VINAYAK v. PARSAPPA.

174 I.C. 951—10 B.E. 511—

40 Bom.L.R. 160—A.I.R. 1938 Bom. 212

REGISTRATION ACT (1908), S. 17

—S. 17 (1) and (2) (xi)—Applicability—Receipt
for mortgage-money—Admissibility without registration
to prove payment.

Receipts purporting to put an end to the mortgage
rights do not come within the exception embodied in S.
17 (2) (xi). It follows therefore that these receipts are

When a mortgage is executed and registered, the
mortgagee gets an interest in immovable property, and
one part of that interest, is the right to receive interest
at a particular rate. Any document which reduced the
mortgagee's right to receive interest at the given rate,
affects his interest in immovable property and it is
compulsorily registrable under S. 17 of the Registration
Act. (*Baguley and Moseley, J.J.*) U PO THIN v THE
OFFICIAL ASSIGNEE. 1938 Rang L.R. 293—

177 I.L. 437—11 R.N. 126—

—S. 17 (1)

tion without

Necessity. *See*

21.

1937 A.W.R. 1218—1937 A.L.J. 1303.

—S. 17 (1) (b)—Applicability—"Declare"—Arbi-
tration without intervention of Court—Dispute as to
title to immovable property—Award declaring rights
of parties—Registration—Necessity.

An award made in an arbitration without the inter-
vention of the Court, which decides the question of
ownership of immovable property is a document which
falls under S. 17 (1) (b) of the Registration Act, as it

inasmuch as it declares the rights of the respective
parties to the arbitration in the property. (*Leach, C.
J.*) VARISAINUTHU CHETTIAR v. SANI MUTHU
CHETTIAR. 176 I.C. 648—11 B.M. 145—

1937 M.W.N. 1183—A.L.R. 1938 Mad. 55.

—S. 17 (1) (b)—Applicability—Dispute between
tenants as to possession of land—Proceedings under
Ss. 145 and 146, Cr. P. Code—Compromise limiting
and defining interests—Registration.

A dispute regarding possession of certain area of land
having arisen among some tenants, action was taken
under Ss. 145 and 146, Cr. P. Code, and the land was
attached. After the order of attachment a compromise
was arrived at among the parties limiting and defining
tenants concerned
land as tenants-
interest created was
party was to have
other parties as

distinguished from the previous state of things when the
disputed land was held by all the parties either as ten-
ants in common or joint tenants.

Held, that the compromise deed must be dealt with
as a document amounting not merely to a mere recital

REGISTRATION ACT (1908), S. 17.

—S. 17 (1) (b)—Award recognising absence of mortgagor's interest in portion of mortgaged property—Need for registration.

An award which only recognises the fact that the mortgagee never had any interest in a portion of the mortgaged property for the simple reason that the mortgagor had also no interest in that property, does not create, or extinguish or limit any right, and therefore does not need registration. (*Dalip Singh, J.*) MST. PARBATI v. GOPAL DAS. 40 F.L.R. 291—A.L.R. 1938 Lah. 481.

—S. 17 (1) (b)—Equitable mortgage—Need for registration—Test.

In deciding the question as to whether evidencing an equitable mortgage requires under S. 17 or not, the question to be whether the document constituted the bargain between the parties or it was merely a record of an

purpose of considering whether the document is to be taken as embodying a bargain between the mortgagor and mortgagee or as merely evidencing a transaction which has already been completed before the document was executed or delivered, not only the terms of the document must be looked into but also the attending circumstances (*R. C. Mitter and Sen, JJ.*) RAM RATTANDAS v. MST. SEW KUMARI.

—S. 17 (1) (b)—*Registration, when not*

Ordinarily a mortgage may be an oral transaction and is not unusual for the debt to be evidenced by a memorandum in writing. If there is such a writing the question is whether it creates the mortgage or whether the mortgage is complete without the writing, the writ-

BAI v. OFFICIAL TRUSTEE OF BENGAL.

GOPAL DAS.

40 P.L.R. 291—

Partition memoranda which do not contain a record of a past division, and which contain an agreement to sever and to divide, subsequent formal document being executed and regarded as recitals of a partition so as to be exempt

REGISTRATION ACT (1908), S. 17.

of the Registration Act, and non-registration of the fact of partition.

(*C.*) RUDRAGOUDA v. C. 361—10 R.B. 538—

40 Bom L.R. 202—A.I.R. 1938 Bom. 257.

—S. 17 (1) (b)—Registration—Necessity—Test—Rights created and not the object of the transaction to be considered—Sale of timber with right to enter to cut and take it—Trees to be cut not specified—Fixing of time limit and payment by instalments—Presence of a forfeiture clause—Deed, if requires registration.

In determining whether a document has got to be registered, one is concerned not with the object which the transaction relates to, but with the rights created or declared by the instrument. Where an instrument provided that one of the parties was to cut and take timber from the forest of another and was allowed to

have ascertained timber sold and created rights and interests in and hence required registration Act. (*Stone, C.J. and Bose, J.*) NARAYANSINGH.

1938 N.L.J. 308—A.I.R. 1938 Nag. 497.

—S. 17 (1) (b)—Right to collect and remove leaves—Grant—Registration—Necessity. See REGISTRATION ACT, Ss. 2 (6) AND 17 (1) (b).

A.L.R. 1938 Nag. 377.

—Ss. 17 (1) (b) and 49—Scope—Award relating to immovable property of value over Rs. 100—Non registration—Effect—Award made decree of Court by in-

upwards to or in immovable property, it is compulsorily registrable, where the award is compulsorily registrable but not registered, the Court is not compe-

ree upon it, as that is contained in the Registration Act. on the award without ad may be set aside on review e or error apparent on the art has been misled into the statute. (*Broomfield*) TANLAL v. DAHYABHAI.

177 I.C. 911—40 Bom L.R. 952—

1938 N.L.J. 123. ing receipt of con. if necessary. of the considera-

A.I.R. 1938 Lah. 497.

REGISTRATION ACT (1908), S. 17.

—S. 17 (1) (e)—Assignment of mortgage decree—

gagae and a subsequent mortgagee bringing a suit on his mortgage and whose mortgage is admittedly subject to the mortgage rights of the prior mortgagee, cannot claim a decree free of the mortgage rights of the prior mortgagee. His rights cannot be held to have disappeared merely because the assignments by him have been found to be invalid for want of registration. (*Dalip Singh and Bhude, JJs.*) PEOPLES BANK OF NORTHERN INDIA, LTD. v. MALIK RAM KISHAN 178 I.C. 278 = A.I.R. 1938 Lah. 430

—S. 17 (2) (vi)—
course of proceedings
created by compromise

a charge on immovable property which was the subject-matter of the proceedings, and the Court order on the compromise, merely stating the order must be taken to convey a good d than a mere order of dismissal; such is meant to incorporate the statements the parties in the compromise and to con view of those statements it was unnecessary to proceed with the case any further, the charge created by the compromise "lodged" by the Court falls under S. 17 (2) (vi) of the Registration Act. (*Venkatasubba Rao and Abdur Rahman, JJs.*) SUBBARAYA PILLAI. 1938 M.W.N.

—S. 17 (2) (vi)
Attachment of immov
Raising of attachme
not to alienate attach
ing charge on some
ity

Wherein a money suit the immovable property of

the Registration Act. The undertaking dant not to alienate operates in law as against him with regard to the property the suit. (*Davita, J.*) KRISHNA v. MADHAV. I.L.R. (1938) Bom 738 = 178 I.C. 500 = 40 Bom L.R. 929 = A.I.R. 1938 Bom 461.

—S. 17 (2) (vi)—Compromise decree granting

REGISTRATION ACT (1908), S. 17.

decree granting occupancy rights is inadmissible if un- (*Wort, J.*) SHEIKH GUHI SAUDAGAR v. BANERJEE. 174 I.C. 200 = 4 B.R. 407 = 10 R.P. 492 = A.I.R. 1938 Pat 140.

(2) (vi)—Consent decree—Transfer of registration, if necessary

Terms of settlement embodied in a decree of Court come within S. 17 (2) (vi) of the Registration Act and do not require registration, although they affect a transfer of property (*Costello and Lord Williams, JJs.*) MANIK CHAND AGARWALA v. PARESH NATHJEE. I.L.R. (1938) M Cal 312.

—S. 17 (2), Cl. (6)—Decree on basis of compromise but not embodying its terms—Compromise, if requires registration.

Where a compromise entered into by the parties to a

A.I.R. 1938 LAR. 101

—S. 17 (2) (vi)—Scope—Compromise deed creating charge—Decree passed before 1929—Registration.

A decree passed prior to 1929, embodying the terms

Necessity for registration.

Sub S. (2) of S. 17 of the Registration Act reserves

s. (b. and d) by his died in a property cessity of ANDRA v. of N. 107. use decree ence,

under the old Registration Act, valid and be received . Venkatasubba Rao and

(*Newsam, JJ.*) AMBU NAIR v. UTHA ANMA. 176 I.C. 733 = 10 E.M. 153 = 1937 M.W.N. 1254 = A.I.R. 1938 Mad. 202.

—S. 17 (2) (xi)—Purchaser out of money left with mortgage—Receipt reciting e—Admissibility. is mortgaged by the owner who and the purchaser redeems the

REGISTRATION ACT (1908), S. 25.

mortgage out of the money left with him, the receipt reciting the fact of extinction of the mortgage is admissible in evidence on the ground that the transaction is not between original parties to the mortgage. The purchaser can enforce the contract by means of a suit and also can raise the question by way of defence in a suit brought by the mortgagee 7 All. 820 and 27 All. 305, Foll. (*Jai Lal, J.*) UDHAM SINGH v. BISHANBAR DAS. 178 I.C. 168 = 40 P.L.R. 776 = A.I.R. 1938 Lah. 485.

—S. 25—Document already four months old registered by Sub-Registrar—Registration, if valid.

A Sub-Registrar has no power to extend the time beyond the standard four months for the registration of document and he has no jurisdiction to proceed with the registration of a document which is already four months old. Where therefore a document old is registered by a Sub Registrar bad. (*Baguley and Sharpe, Jf.*) MA E TIN. 174 I.C. 4

—S. 28—Fraud on registration law—Burden of proof.

The question whether the parties to a document intended to commit a fraud on the law is a question of fact, and like every other fact must be pleaded and proved. The fraud must prove that the parties item of property fraudulently in to give jurisdiction to the particular registering officer before whom it was presented, and that there was no intention in fact that the document should have any binding effect on that item of property. (*Baifas and Hamilton, Jf.*) SULTAN AHMAD KHAN v. SIRAJUL HAQUE. I.L.B. (1938) All. 125 = 174 I.C. 738 = 1938 A.L.J. 1938 A.L.J.

—S. 28—Fraud on registration law—Burden of proof—Amount to—Jurisdiction of Sub-Registrar—Determination.

to the joint ownership of the family, and the property is

cause of non-registration, for any reason whatever, that matter is foreign and should not affect the original enquiry. The fact that because of the Sub-Registrar's refusal, the deed does not perhaps operate on the particular item of property has no effect on the original question of his jurisdiction. It is only the act of the parties that has to be considered, and if the parties themselves intended to perpetrate a fraud on the law of registration, the matter then assumes a different com-

REGISTRATION ACT (1908), S. 34.

plexion; but if on account of any action of the Sub Registrar certain consequences flow, the act of presentation itself would not become invalid (*Baifas and Hamilton, Jf.*) SULTAN AHMAD KHAN v. SIRAJUL HAQUE. I.L.B. (1938) All. 125 = 1938 A.W.R. (H.C.) 98 = 174 I.C. 738 = 1938 A.L.R. 324 = 10 R.A. 615 = 1938 A.L.J. 23 = A.I.R. 1938 All. 170.

—S. 28—Place of registration—Bona fide mistake as to—Effect—Remedy—Procedure to be followed.

Where owing to a bona fide mistake every one including the Sub Registrar a document is registered at a place where it could not be registered, as the properties concerned were not within the jurisdiction of the Sub-Registrar concerned, the document is inoperative. But in such a case the document can be presented for re-proceed as time. No no limitation. C. J. and JBL.

1938 N.L.J. 403 = A.I.R. 1938 Nag. 550.

—S. 32—Minor claiming under document—Right to present it for registration.

presented. A minor registration. DAS v.

177 I.C. 517 = 10 R.C. 253 = A.I.R. 1938 Cal. 120.

—Ss. 32 and 33—Power of Attorney—Construction—Power given to carry on proceedings in Court etc. —If confers power to present document before Sub-

to the exact words contained therein. The word "etc."

—S. 33—Power of attorney—Validity—Conditions

Under S. 34, Registration Act, an enquiry as to whether any of the parties concerned in the registration is a major or not is not one of the duties imposed on the Registrar. The opinion of the Sub Registrar as to the executant's age when the document was presented for registration cannot be accepted as evidence of his age at all, much less conclusive evidence. (*Grilla, J.*) KISAN ISARANJEE v. MT. JAIWANTI. A.I.R. 1938 Nag. 385.

REGISTRATION ACT (1908), S. 34

—S 34 (1), proviso—*Extension of time—Order signed by District Sub-Registrar—Validity*

Where from the form of the order it appeared to be clear that the order under S. 34 (1), proviso, extending time, was issued by the District Registrar but signed for him by the District Sub Registrar.

Held, that it might be more proper for the District Registrar, when he makes an order of this kind to sign it himself, but the effect of this order cannot be regarded as invalid because the District Sub Registrar signed it for him (*James and Dhaile, Jf*) THAKUR PRASAD MARWARI v. CHAMAN RAM MARWARI.

174 I.C. 385 = 4 B.R. 439 = 10 R.P. 508 =
1938 P.W.N. 31 = 19 Pat L.T. 67 =
16 Pat. 660 = A.I.R. 1938 Pat. 136.

—S 35—*Partial registration of document*—

174 I.C. 738 = 1938 A.L.R. 324 = 10 E.A. 615 =
1938 A.W.R. (H.C.) 33 = 1938 A.L.J. 23 =
A.I.R. 1938 All. 170.

—S 35—*Scope—Conditions for registration—Refusal of registration—Grounds for—Wrong refusal—If can be ignored—Document executed by a law*

attorney—Effect—Died—If a
beneficiary of B's

§ 35 of the Registration Act: document should be admitted to be executed by the person by whom it purports to be executed, if it can be proved that the document was executed by him. If the person by whom it purports to be executed is dead, it can be proved that the document was executed by him only if he denies the execution of the document by A on his own behalf. If A's admission is not enough so far as he is himself concerned or so far as B is concerned. It is not necessary for him to produce any power of attorney on behalf of B, nor, is it necessary for the registering officer to look at any power of attorney for registering that document. But if the registering officer for any reason refuses registration as against B on the ground of invalidity of a power of attorney, and the endorsement also says that the document was not registered as against B, the document cannot be regarded as having been registered on behalf of B as well on the ground that the refusal of registration was wrong. The document can be regarded as registered only on behalf of A in his individual capacity and not in his capacity as general attorney of B. (*Baig and Hamilton, Jf.*) SULTAN AHMAD KHAN v. SIRAJUL HAQUE. I.L.R. (1938) All. 125 =

174 I.C.
1938

—S. 35, 1

Value—Plea of insanity of executant.

REGISTRATION ACT (1908), S. 49.

ignorance of or discarding same will not bind the second Appellate Court (*Puranik, J*) MST. HAZRABI v. MST. FATMARI. 177 I.C. 80 = 11 R.N. 103 = A.I.R. 1938 Nag. 204.

—S 35 (3) (b)—*Registration of mortgage deed—Executant, if a major—Presumption*

There is no presumption from the fact of registration of a mortgage deed that at the time of its execution the mortgagor was a major and not a minor. (*Biswas and Edgley, Jf*) SM SARASWATI DEBI v. BAHADUR LAL MISSIR. 68 O.L.J. 28.

—S. 36—*Failure to observe procedure under—Attendance of executants not procured—If affects right of suit under S. 77. See REGISTRATION ACT, SS 77 AND 36* III Pat. 660.

—S. 47—*Document in respect of certain property*

ment as the document when registered took effect from the date of execution, (*Fazl Ali and Rowland, Jf.*) FAIVAUDDIN KHAN v. MT. ZAHUR BIBI.

174 I.C. 372 = 4 B.R. 433 = 1938 P.W.N. 445 =
10 R.P. 506 = 19 Pat L.T. 383 =
A.I.R. 1938 Pat. 134.

—*When complete—If registration, if can*

executed by the executant, though aid. Failure to of the execution,

1938 A.W.R. (H.C.) 370 = 11 E.A. 128 =
1938 A.L.R. 633 = 1938 A.L.J. 557 =
A.I.R. 1938 All. 431.

—S. 49—*Applicability—Permanent lease—No rent payable for first seven fasla—Provision for payment of Rs. 19-12-0 per year subsequently for ever—Deed not registered—Admissibility to prove terms of grant See MADRAS ESTATES LAND ACT, S. 26 (3), A.I.R. 1938 Mad. 769.*

—S. 49—*Collateral purpose—Letter giving address seen over certain properties—Recital, that properties are now with another having equitable mortgage—Admissibility to prove acknowledgment of equitable mortgage. See LIMITATION ACT, S. 19.*

1938 M.W.N. 785,
—S. 49—*“Collateral purpose”—Meaning of—“mortgage”—“Admissibility for proof of evidence—Ad-*

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REGISTRATION ACT (1908), S. 49.

unregistered were
not be looked into

establishing the plaintiff's case, by reason of S. 91 of the Evidence Act. (*Wort, A.C.J. and Manohar Lal, J.*)
BHURHAN MIAN v RADHIKA KUMARI DEBI
19 Pat.L.T. 489=176 I.C. 35=11 R.P. 38=
4 B.R. 667=1938 P.W.N. 789=
A.I.R. 1938 Pat. 479.

in value, the claim to be treated as a "colla of S. 49, and such evidence. If however,

REGISTRATION ACT (1908), S. 49.

A deed of compromise relating to immovable property executed in the course of a suit and not recorded in the presence of
MALAN
L.R. 115.
registered—
nd.
inadmis-
d cannot
of land

deed. He can treat the other party who has taken possession of the land under the inadmissible deed as a trespasser. (*Abdul Rashid, J.*) SAID HASSAN v. QALANDAR. 40 P.L.R. 224.

S. 49—Invalid usufructuary mortgage—Admissibility to prove nature of possession.

repayment of
its, evidence of
gage may be
urpose of show-
ion (*i.e.*) that
, J.) U THET
ang L.R. 442.
for—Admis-

REGISTRATION ACT, SS. 17 (1) (b) AND 49.

40 Bom L.R. 952.

S. 49—Scope—Patta unregistered—Admissibility to prove title in suit for possession. See EVIDENCE ACT, S. 91. 18 Pat L.T. 1012.

S. 49—Unregistered lease—Admissibility to prove rent.

ered Patta
NCE ACT,
L.T. 1012.
mortgage
mance—If

(*Jee and Thakor, J.J.*) RUDRAGOUDA v. BASANGUDA
175 I.C. 361=10 R.P. 538=
40 Bom L.R. 202=A.I.R. 1938 Bom 257.
S. 49—Compromise relating to immovable property—Unregistered deed—Admissibility

sufficient to support a suit for specific performance of an agreement to transfer. The document being a document of transfer and intended to be such must be registered in order to give it validity as a mortgage. It is not open to a party to ignore the provisions of the

REGISTRATION ACT (1908), S. 51.

law of registration and to treat it as a contract to transfer—which it is not—and to compel the transfer to execute a formal transfer. The unregistered mortgage cannot itself be regarded as the contract for purposes of the new proviso added to S. 49 of the Registration Act, when there is no proof of any separate agreement to mortgage prior to the execution of the mortgage deed. (*Maisharan Nair and Stodart, J.J.*) **SOMAPPA v. OFFICIAL RECEIVER OF BELLARY.**

A.I.R. 1933

—S. 51—*Doc.**Validity of registr.*

Where a document partnership deed un- by mistake entered in the book pertaining to alienations, the document is not validly registered as an alienation but is only validly registered as a partnership (*Dalip Singh and Skemp, J.J.*) **MADAN LAL v. BISHAN.**

A.I.R. 1933 La

—S. 60 (2)—Scope—Barden of proof—Involvement by Registrar recording payment of consideration for bond—Effect of—Denial of consideration—**Orus, See DEED—CONSIDERATION.** 1938 P.W.N. 773

—S. 73 (1)—*Agst**Meaning of.*

The words "as aforesaid" authorised as aforesaid" Act are not mere surplus.

(*Alahomed, J.*) **GANESH DASS v. MAHOMED HUS SAIN.** 40 P.L.R. 718—A.I.R. 1938 Lah. 783

—S. 75—*Document presented more than 30 days*

RELIGIOUS ENDOWMENT.

MARWAR.

174 I.Q. 385—10 Pat L.T. 67—
1938 P.W.N. 31—4 B.E. 439—10 R.P. 508—
16 Pat. 660—A.I.R. 1938 Pat. 136.

—S. 77—*Suit under—Proof required of plaintiff.*
It is settled law that in a suit under S. 77 of the Registration Act all that is required to be shown by the plaintiff is whether the document was executed or not, (or also in some cases whether certain requirements of the law as to presentation for registration are complied with.)

176 I.C. 140—11 B.E. 28—
A.I.R. 1938 Rang. 176.

(3) C. P. CODE, S. 92.

—*Alienation of property belonging to—Recovery—Procedure.*

4 B.E. 556—10 R.P. 592—A.I.R. 1938 Pat. 394

—*Dedication—Construction of consent decree—Dedication or recognition of previous dedication*

The procedure to be followed after presentation under followed light make (*Singh and*

A.I.R. 1938 Lah. 255.

—Ss. 77 and 36—*Right of suit under S. 77—If affected by failure of Sub-Registrar to secure attendance of executants.*

I.L.R. (1938) 2 Cal. 312.

—*Dedication—Construction of will—Dedication to mander or to deity.*

A Digambari Jain resident of Calcutta by his will dedicated certain premises in the following terms—"To the *Manderjet* at Sri Calcutta of the *Tairupantee Amnyo* I have given and cause to be given thus:—The *puckah* house for my own dwelling situate in *Sootalattee*, which said house I give in the *Manderjet*. The rest that is ended pairs,

or but
valid.
AND

312.

RELIGIOUS ENDOWMENT.

Mahant—Powers of alienation—Permanent lease by—Validity.

A limited owner, such as the *Mahant* of an *Asthal*, is competent to create derivative tenures and estates conformable to usage. The idol's estate is left with the benefit of an augmentation of rent from time to time, and it is within the competence of the *Shebait* to grant a permanent lease in the ordinary course of management. (*Faiz Ali and Manohar Lall, Jfs.*) **MAHABIR DAS v. UDIT NARAIN VARMA.** 17 Pat 594—19 Pat L T. 570—A.I.R. 1938 Pat. 613

Temple—Public or private—Tests to determine—Proof of user by public and of separate endowment in trust for deity—Presumption—User by public—If to be presumed to be as of right—Instances of exclusion due to personal ill-will—Effect of.

The want of a regular access to the temple cannot be taken to be of much use in arriving at a conclusion as to the

for user by the public (unless the contrary is establish-

REVENUE RECORDS.

Where an office of the mutawalli of a wakf falls vacant, the District Judge is entitled under proper circumstances to make an appointment to fill the vacancy but he has no general power to remove a mutawalli in miscellaneous proceedings on an application by one of the beneficiaries, his power in this respect being limited and defined by Ss. 18 and 14, Religious Endowments Act, 1863 and S. 92, C. P. Code, nor has he power in such proceedings to require the mutawalli of a private endowment to render accounts. (*James, J.*) **MAHOM ED YUSUF v. MAHOMED AYUB.**

A.I.R. 1938 Pat 537.

RELIGIOUS OFFICE—Transfer—Office of temple trustee—Transfer for monetary consideration—Legality.

A transfer of the office of trustee of a temple for a monetary consideration is

RELIGIOUS PROCESSION—Right to conduct in public streets and before mosques—Limitations to exer-

Where a decree entitled the Hindus to take processions

175 I.O. 738—11 R.M. 1 (2)—1937 M.W.N. 1171—A.I.R. 1938 Mad. 209.

RELIGIOUS ENDOWMENTS ACT (XX OF 1863), S. 14—Applicability—Suit against trespassers—Maintainability

S. 14 of the Religious Endowments Act that in a suit under that section the Court has not to pass any order

teasance etc. A suit under the section can be only against those persons vested or to whom can be against (*Divatia and Sen,* I.L.R. (1938) Bom.

40 Bom L.R. 385—A.I.R. 1938 Bom. 311.

—Ss 14 and 18—Private wakf—Powers of District Judge as regards removal of mutawallis and accounts.

MINAL LAND AMENDMENT ACT (XX OF 1932), S. 7. (1938) 2 M.L.J. 883.

RESTITUTION OF CONJUGAL RIGHTS—Suit for—Powers of Court.

No Court can compel a man or woman to live with one another against their will. (*Davis, J. C. and Weston, J.*) **RUKIBAI v. PARTABRAI.**

It is not for Revenue Courts to go into intricate questions and by the Revenue (J.M.)

REVENUE RECORDS.

See also (1) EVIDENCE.

(2) EVIDENCE ACT, S. 35.

1938 A.W.R. 61 (B.R.).

RELIGIOUS ENDOWMENT.

—*Mahant—Powers of alienation—Permanent lease by—Validity.*

A limited owner, such as the *Mahant* of an *Asthal*, is competent to create derivative tenures and estates con

UDIT NARAIN VARMA. 17 Pat 594=
19 Pat L.T. 570=A.I.R. 1938 Pat. 613

—*Temple—Public or private—Tests to determine—Proof of user by public and of separate endowment in trust for deity—Presumption—User by public—If to be presumed to be as of right—Instances of exclusion due to personal ill will—Effect of.*

temples of Hol, but where it is found that such public as is available in the locality is in the habit of worshipping in the temple, the relation of the temple to the public is

for user by the public (unless the contrary is established)—particularly when the character of the temple, its construction, the arrangement of the various parts of the temple and the nature of the deities installed there are

only be ascribed to the private character of the institution. A single instance of exclusion which is clearly the as at the 'IAN OR.

175 I.C. 738=11 B.M. 1 (2)=1937 M.W.N. 1171=
A.I.R. 1938 Mad 209

RELIGIOUS ENDOWMENTS ACT (XX OF 1863), S. 14—Applicability—Suit against trespassers—Maintainability

S. 14 of the Religious Endowments Act that in a suit under that section the Court has not to pass any order against a person who is alleged to have intruded into

REVENUE RECORDS.

Where an office of the mutawalli of a wakf falls vacant, the District Judge is entitled under proper circumstances to make an appointment to fill the vacancy but he has no general power to remove a mutawalli in ellaneous proceedings on an application by one of beneficiaries, his power in this respect being limited defined by Ss. 18 and 14, Religious Endowments 1863 and S. 92, C. P. Code, nor has he power in proceedings to require the mutawalli of a private endowment to render accounts. (*Jamet, J.*) MAHOM ED YUSUF v. MAHOMED AYUB.

A I.R. 1938 Pat 537.

RELIGIOUS OFFICE—Transfer—Office of temple trustee—Transfer for monetary consideration—Legality.

177 I.C. 823=47 L.W. 529=(1938) M.W.N. 393=
A.I.R. 1938 Mad 718=(1938) 1 M.T. 517.

Where a decree entitled the Hindus to take processions through the public streets with music, etc., 'except during the hours of public congregational worship in the mosque' it was held, that the exception introduced was a proper

such a solution, as it would be inconsistent with the existing state of the law. (*Pandurang Row and Venkata-ramana Rao, JJ*) RANGIAH CHETTY v. HASSUMIAH. 1938 M.W.N. 119=47 L.W. 683=
A.I.R. 1938 Mad 305=(1938) 2 M.L.J. 165.

REPEALING AND AMENDING ACT (XX OF 1932) S. 4—Scope—Effect on Criminal Law Amendment Act (1932)—Latter, if repealed in toto. See CRIMINAL LAND AMENDMENT ACT (XX OF 1932), S. 7. (1938) 2 M.L.J. 863.

RESTITUTION OF CONJUGAL RIGHTS—Suit for—Powers of Court.

No Court can compel a man or woman to live with one another against their will. (*Davis, J. C. and Weston, J*) RUKIBAI v. PARTABRAI.

A.I.R. 1938 Sind 233.

40 Bom L.R. 365=A.I.R. 1938 Bom. 311.
—Ss 14 and 18—Private wakf—Powers of District Judge as regards removal of mutawallis and accounts.

REVENUE RECORDS.

See also (1) EVIDENCE.

(2) EVIDENCE ACT, S. 35.

1938 A.W.R. 61 (B.R.)-

SEA CUSTOMS ACT (1878), S. 30

under assessment at time and place of importation—C. (a), if inapplicable for want of sales of other goods.

The application of Cl. (a) of S. 30 does not depend upon any hypothesis to the effect that at the time and place of importation an indefinite amount of further goods added to the available supply has had effect upon the wholesale price. Ordinarily, at the time of making out the bill of entry there will not be an actual price relating to the goods themselves and complying with the requirements of Cl. (a). As a rule, therefore, the price appropriate to the goods under assessment will under the clause be deduced, if at all, from actual prices relating to other goods of like kind and quality. But if there is an actual price for the goods themselves at the time and place of importation and if it is a "wholesale cash price less trade discount", the clause is not inapplicable for want of sales of other goods. The goods under assessment may under Cl. (a) be considered as members of their own class even although at the time and place of importation there are no other members and the price obtained for them may correctly represent the price obtainable for goods of the like kind and quality at the time and place of importation. (*Sir George Rankin*.) FORD MOTOR COMPANY, LTD. v. SECRETARY OF STATE. 65 I.A. 32=

I.L.R. 1938 Bom.

10 B.P.C.

1938 A.W.R. (F)

1938 M.W.N. 134=47 L.W.

1938 O.W.N. 1

66 C.L.J. 466=40 Bom.

32 S.L.R. 261=1938 P.O. 10=

(1938) 1 M.L.J. 161 (P.C.).

—S. 30 (a)—*Price, if can be arrived on basis of actual price.*

The word ascertainable in Cl. (a) of S. 30 imports more than could be satisfied by the result of a mere estimate. On the other hand the language of the section "or are capable of being sold"—does not exclude all possibility of arriving at the price defined by Cl. (a) upon the basis of an actual price, adjustment may be needed to eliminate e.g., between cash and a month's credit (*Rankin*.) FORD MOTOR COMPANY LTD.

TARY OF STATE.

I.L.R.

1938

1938 M.W.N. 134=

1938 O.W.N. 188=1938 A.L.R. 110=

66 C.L.J. 466=40 Bom. L.R. 269=4 B.R. 287=

under the Act. It is only in the former class of cases

examinable by a Civil Court except when they have acted

SECURITIES ACT (1920), S. 21.

without jurisdiction or in contravention of fundamental principles of judicial procedure. The finality attaching to decisions or orders of customs officers, enacted by the last clause of S. 188, is not limited to decisions or orders passed by customs authorities when acting under S. 182 and the succeeding sections, but that finality should not be interpreted to take away the jurisdiction of Civil Courts in which the customs authorities act on a wrong interpretation of the Sea Customs Act or the Tariff Act and impose a higher customs duty. It is too much to contend that every order of a customs officer under the Act in whatever connection passed must be regarded as in the nature of an adjudication by a tribunal. (*Varadachariar and Pandrang Row, J.J.*) MASK & CO. v. SECRETARY OF STATE. I.L.R. 1938 Mad. 1040=

(1938) M.W.N. 341=47 L.W. 505=

A.I.R. 1938 Mad. 508.

SECURITIES ACT (X OF 1920), S. 16—*Scope of—Renewal of Government promissory notes—Effect of.*

The holder of a renewed Government promissory note obtains a new promise from Government free from any equities or disputes which might have attached to the prior note. S. 16 of the Securities Act provides in terms that a renewed Government promissory note is to be deemed to constitute a new contract between the Govern-

al

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11 B.P.C. 1=4 B.R. 677=1938 O.A. 930=

19 Pat L.T. 625=I.L.R. 1938 Bom. 502=

40 Bom L.R. 888=1938 A.L.J. 807=

A.I.R. 1938 P.C. 191=(1938) 2 M.L.J. 169 (P.C.).

—S. 21—*Construction—Implied right of indemnity under old Act, if abrogated—Statute—Construction—New Act—Extent of protection offered.*

As a matter of construction the view cannot be

existed in the repealed Act of 1886. A statute is *prima*

1920 to abrogate the common law indemnity existing under the repealed Act the Legislature would seem

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Government promissory note and su

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SALE OF GOODS ACT (1930), S. 20.

warranty implied by law of merchantability. The condition as to merchantability requires the goods to be reasonably fit to be sold as goods of the particular description. The other condition as to fitness requires the goods to be reasonably fit for use for the particular purpose for which they were ordered. In both cases they are required to be intrinsically fit, and not fit having regard to some particular legislation or particular rules framed by the state or a third party. (*Derbyshire, C.J.* and *Ameer Ali, J.*) JOSEPH MAYR v. PHANI BHUSAN GHOSH.
I.L.B. (1938) 2 Cal. 88.

—Sa. 20 and 22—Applicability—Sale of goods by lot to be delivered at place of buyer—Goods to be trans-

goods delivered to mill at the place of delivery, property in the goods cannot pass to the buyer until the goods, if so required by the buyer, are weighed at the place of delivery. In such a case S. 22 applies. This is particularly so in the case of goods such as scrap iron, the weight of which decreases to certain extent in transit. (Rupchand Bilaram, Ag. J C and Lobo, J.) UGAR-
CHAND GAJANAND V. MOTIRAM GHANSHANDAS.

173 I.O. 535-10 R.S. 216-A.I.R. 1933 Sind 18.

—S. 25 (2)—*Applicability—Goods consigned by seller to buyer by rail—Railway receipt in seller's name sent to banker with instructions not to part with same until payment by buyer—Effect—Goods to be weighed by buyer at destination to ascertain price—Acceptance of*

there is a *prima facie* presumption that the seller intends to reserve the goods and that title passes to the buyer when the contract is fulfilled, of exchange or return on the seller, has no

was defaulted similar action was taken. In respect of the third instalment when a suit was filed, it was contended that the cause of action for the second and third suits was the same and hence the third suit was barred by O. 2, R. 2, C. P. Code.

SEA CUSTOMS ACT (1878), S. 30.

Held, that looking to the terms of the contract, the intention of the parties and the circumstance, in that objection on similar grounds was not taken in the second suit, the causes of action for default of each instalment were separate and that the suit was not barred. (*Roberts, C. J. and Dunkley, J.*) KATIL KOTHARI v. LAKMI-CHAND. 178 I Q 538—A I R. 1938 Rang. 364.

—S. 51 (2)—Re sale—Delay—Effect on damages.
See SALE OF GOODS—RIGHT OF RE SALE.

1938 A.W.R. (H C.) 149.

—S. 62—Scope of—Absence of appropriation—
Agreement as to re sale on breach and as to recovery of
godown rent—Validity of.

P. NEW SAVAN SUGAR AND GUM REFINING CO.,
 LTD. 175 I.C. 552 = 10 R.A. 695 = 1938 A.L.R. 442 =
 1938 A.W.R. (H.C.) 149 = 1938 A.L.J. 227 =
 A.I.R. 1938 All. 272

SEA CUSTOMS ACT (VIII OF 1878). S. 30—/m-

port of cars—Distributor paying price notified in current price list before delivery—Delivery f.o.r. made within few days of arrival of cars—Price to distributor is wholesale cash price.

1 The appellants, importers into India of cars issued
from time to time a price list and the terms of business
between them and the distributors of such cars, were
that the retail price to be charged by the distributor to
the public was that stated in the price list current at the
and the price
the distributor had
Delivery was
in the case
of Bombay
itself, viz Ford Automobiles (India), Ltd., to whom
an warehouse in Bombay.
price list was in all cases
and the same was true
appellants and the distri-

to their distributors

40 Bom.L.R. 269-4 B.R. 287-32 S.L.R. 264-
A.I.R. 1938 P.C. 15-
(1938) 1 N.L.J. 161 (P.C).

—B. 30(a)—“Goods of the like kind and quality”
—Existence of wholesale cash price for goods themselves

SEA-CUSTOMS ACT (1878), S. 30

under assessment at time and place of importation—C. (a), if inapplicable for want of sales of other goods.

The application of Cl. (a) of S. 30 does not depend upon any hypothesis to the effect that at the time and place of importation an indefinite amount of further goods added to the available supply has had effect upon the wholesale price. Ordinarily, at the time of making out the bill of entry there will not be an
ing in the goods themselves and
requirements of Cl. (a). As a rule,
appropriate to the goods under as-
the clause be deducted, if at all from actual prices relat-
ing to other goods of like kind and quality. But if
there is an actual price for the goods
time and place of importation and
cash price less trade discount,
inapplicable for want of sales of
goods under assessment may under
as members of their own class even
and place of importation there;
and the price obtained for them
the price obtainable for goods
quality at the time and place
George Rankin.) FORD MOTO
SECRETARY OF STATE.

65 I.A. 32=
I L E 1938 Bom 249=1938 A.L.J. 87=
10 B.P.O. 175=42 C.W.N.

1938 A.W.E. (P.C.) 23=172 I.C.

1938 M.W.N. 134=47 L.W. 205=1938 O.L.B.

1938 O.W.N. 188=1938 A.L.B.

66 C.L.J. 468=40 Bom L.R. 269=4 B.B. 287=
32 S.L.R. 264=A.I.E. 1938 P.C. 15=
(1938) 1 M.L.J. 161 (P.C.).

—S. 30 (a)—Price, if can be arrived on basis of
actual price.

The word 'ascertainable' in Cl. (b) of S. 30 imports
more than could be satisfied by the result of a mere
estimate. On the other hand the language of the
section 'or are capable of being sold'—does not
exclude all possibility of arriving at the price defined by
Cl. (a) upon an
adjustment in.

e.g., between
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I.J.

1938 M.W.N.

66 C.L.J.

—S. 188—*juris*
or order of customs.

Order imposing higher customs duty on wrong inter-
pretation of Act—Sust in Civil Court—If barred.

Civil Court from questioning them. Adjudications by
customs officers dealing with an offence committed under
S. 182 of the Act have *prima facie* to be regarded as
adjudications by a special tribunal, and as such are not
examinable by a Civil Court except when they have acted

SECURITIES ACT (1920), S. 21.

without jurisdiction or in contravention of fundamental
principles of judicial procedure. The finality attaching
to decisions or orders of customs officers, enacted by the
last clause of S. 188, is not limited to decisions or orders
passed by customs authorities when acting under S. 182
and the succeeding sections, but that finality should not
be interpreted to take away the jurisdiction of Civil

Act in whatever connection passed must be regarded as
in the nature of an adjudication by a tribunal. (*Parade*.

deemed to constitute a new contract between the Govern-
ment and the person to whom it is issued and all
(*Lord Wright*.)

NDIA, LTD.

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B. (P.C.) 197=

42 C.W.N. 267=67 O.L.J. 466=1938 O.L.R. 304=

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A.I.B. 1938 P.C. 191=(1938) 2 M.L.J. 169 (P.C.).

—S. 21—Construction—Implied right of indem-
nity under old Act, if abrogated—Statute—Construc-
tion—New Act—Extent of protection offered.

As a matter of construction the view cannot be

used as
from
right,
(*Lord Wright*.) SECRETARY OF STATE v. BANK OF

Security not taken—Government forced to pay damages
for conversion of original note—If entitled to indemnity
from party who requested for renewal.

A broker forged the indorsement of the holder of a
Government promissory note and subsequently indo

SALE OF GOODS ACT (1930), S. 20.

warranty implied by law of merchantability. The condition as to merchantability requires the goods to be reasonably fit to be sold as goods of the particular description. The other condition as to fitness requires the goods to be reasonably fit for use for the particular purpose for which they were ordered. In both cases they are required to be intrinsically fit, and not fit having regard to some particular legislation or particular rules framed by the state or a third party. (*Derbyshire, C. J. and Amer Ali, J.*) JOSEPH MAYR v. PHANI BHUSAN GHOSH. I.L.R. (1938) 2 Cal 88.

—Ss. 20 and 22—*Applicability—Sale of goods by lot to be delivered at place of buyer—Goods to be transported*

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place of delivery. In such a case S. 22 applies. This is particularly so in the case of goods such as scrap iron, the weight of which decreases to certain extent in transit. (*Rupchand Bilaram, Ag. J. C. and Lobo, J.*) UGAR-CHAND GAJANAND v. MOTIRAM GHANSHANDAS. 173 I.C. 635—10 R.S. 216—A.I.R. 1933 Sind 18.

buyer at destination to ascertain price—Acceptance of goods by buyer—If carrier properly in route to seller

there is a *prima facie* presumption that the seller intends to reserve to himself the right of disposal of the goods and that the property in the goods does not pass to the buyer until the condition as to actual payment is fulfilled. The fact that the buyer accepts a bill

barred.

Parties in a contract agreed to deliver and take 1500 bags of corn in three instalments of 500 bags each. When the first instalment was defaulted, a suit was filed in respect of that instalment, when the second instalment was defaulted similar action was taken. In respect of the third instalment when a suit was filed, it was contended that the cause of action for the second and third suits was the same and hence the third suit was barred by O. 2, R. 2, C. P. Code.

SEA CUSTOMS ACT (1878), S. 30.

Held, that looking to the terms of the contract, the intention of the parties and the circumstance, in that objection on similar grounds was not taken in the second suit, the causes of action for default of each instalment were separate and that the suit was not barred. (*Roberts, C. J. and Dunkley, J.*) KATILAL KOTHARI v. LAKMICHAND. 178 I.C. 538—A.I.R. 1938 Rang. 364.

—S. 54 (2)—*Re-sale—Delay—Effect on damages.*
See SALE OF GOODS—RIGHT OF RE SALE
1938 A.W.R. (H.C.) 149.

—S. 62—*Scope of—Absence of appropriation—Agreement as to re sale on breach and as to recovery of godown rent—Validity of.*

NEW SAVAN SUGAR AND GUM REFINING CO.,
TD. 176 I.C. 652—10 R.A. 695—1938 A.L.R. 442—
1938 A.W.R. (H.C.) 149—1938 A.L.J. 227—
A.I.R. 1938 All. 272

SEA CUSTOMS ACT (VIII OF 1878), S. 30—*Import of cars—Distributor paying price notified in current price list before delivery—Delivery for made within few days of arrival of cars—Price to distributor of vehicles each day.*

into India of cars issued and the terms of business distributors of such cars, were that the retail price to be charged by the distributor to the public was that stated in the price list current at the and the price lants was the distributor had Delivery was e in the case t of Bombay itself, viz., Ford Automobiles (India), Ltd., to whom delivery was made at their own warehouse in Bombay. The price mentioned in the price list was in all cases for a vehicle in running order, and the same was true of the contract between the appellants and the distri-

ellants' price to their distributors within the meaning of S. 30. If re cars were invoiced a few days ship and the price became fixed were therefore sales at on in every reasonable

thead charges had no under Cl. (a) of S. 30.
OTOR COMPANY, LTD.,
65 I.A. 32—

I.L.R. 1938 Bom 219—1938 A.L.J. 87—
10 R.P.O. 175—42 C.W.N. 257—
1938 A.W.R. (P.C.) 23—172 I.C. 771—
1938 M.W.N. 131—47 L.W. 205—1938 O.L.R. 76—
1938 O.W.N. 188—1938 A.L.R. 110—66 C.L.J. 466—
40 Bom L.R. 269—4 B.R. 287—32 S.L.R. 264—
A.I.R. 1938 P.O. 15—
(1938) 1 M.L.J. 161 (P.C.).

—S. 31(a)—*Goods of the like kind and quality—Existence of wholesale cash price for goods themselves*

SEA CUSTOMS ACT (1878), S. 30

under assessment at time and place of importation—Co.

ing to the goods themselves and complying with the requirements of Cl. (a). As a rule, therefore, the price appropriate to the goods under assessment will under the clause be deduced, if at all, from actual prices relating to other goods of like kind and quality. But if there is an actual price for the goods themselves at the time and place of importation and if it is a "wholesale cash price less trade discount", the clause is not inapplicable for want of sales of other goods. The goods under assessment may under Cl. (a) be considered as members of their own class even although at the time and place of importation there are no other members and the price obtained for them the price obtainable for goods of the same quality at the time and place

SECURITIES ACT (1920), S. 21.

without jurisdiction or in contravention of fundamental

interpretation of the Sea Customs Act or the Tariff Act and impose a higher customs duty. It is too much to contend that every order of a customs officer under the Act in whatever connection passed must be regarded as in the nature of an adjudication by a tribunal. (*Varadachariar and Pandrang Row, J.J.*) MASK & CO. v. SECRETARY OF STATE. I.L.R. 1938 Mad 1040 (1938) M.W.N. 341=47 L.W. 505= A.I.R. 1938 Mad. 608.

SECURITIES ACT (X OF 1920), S. 16—*Scope of—Renewal of Government promissory notes—Effect of.*

The holder of a renewed Government promissory note in any terms to be constitute a new contract between the Government and the person to whom it is issued and all

1938 O.W.N. 188=1938 A.L.J. 110=
66 C.L.J. 466=40 Bom.L.R. 269=4 B.R. 287=
32 M.L.R. 264=A.I.R. 1938 P.C. 15=
(1938) 1 M.L.J. 161 (P.C.)

—S. 30 (a)—*Price, if can be arrived on basis of actual price.*

The word 'ascertainable' in Cl. (a) of S. 30 imports more than could be satisfied by the result of a mere estimate. On the other hand the language of the section—"or are capable of being sold"—does not exclude all possibility of arriving

Cl. (a) upon the basis of an actual adjustment may be needed to the e.g. between cash and a month's Rankin) FORD MOTOR COMPANY

TARY OF STATE.

I.L.R. 1938 Bom. 249=1938 A.L.J. 87=
10 R.P.C. 175=42 N.W.N. 257=
1938 A.W.E. (P.C.) 28=172 I.C. 771=
1938 M.W.N. 134=47 L.W. 205=1938 O.L.R. 76=
1938 O.W.N. 188=1938 A.L.R. 110=
66 C.L.J. 466=40 Bom.L.R. 269=4 B.R. 287=
32 S.L.R. 264=A.I.R. 1938 P.C. 15=
(1938) 1 M.L.J. 161 (P.C.)

A.I.R. 1938 P.C. 191=(1938) M.L.J. 169 (P.C.).

—S. 21—*Construction—Implied right of indemnity under old Act, if abrogated—Statute—Construction—New Act—Extent of protection offered.*

fact to be construed as changing the law in no greater extent than its words or necessary intendment require. S. 21 was not in the earlier Act of 1886. If it had been intended by the insertion of that section in the Act of 1920 to abrogate the common law indemnity existing under the repealed Act the Legislature would it seems have used words clearly expressing that intention. There is no reason to justify reading in or implying such

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SETTLEMENT RECORDS.

SIND FRONTIER REGULATION (1892), S.12.

indemnified against the loss incurred as the office had issued the renewed note only the Bank of India. The fact that no at the time of the renewal could not at indemnity. (Lord Wright.) SECRETARY BANK OF INDIA, LTD.

175 I.C. 327 (P.C.) = I.L.R.

48 L.W. 11 = 1938

1938 A.W.R. (P.C.) 197 =

67 C.L.J. 456 = 19

1938 M.W.N. 456 = 1938 A.L.R. 492 =

11 B.P.C. 1 = 4 B.R. 677 = 1938 O.A. 930 =

19 Pat.L.T. 625 = 40 Bom.L.R. 868 =

1938 A.L.J. 807 = A.I.R. 1938 P.C. 191 =

(1938) 2 M.L.J. 169 (P.C.)

SETTLEMENT RECORDS.

See (1) EVIDENCE.

(2) EVIDENCE ACT, S. 35.

(3) REVENUE RECORDS.

SHIPPING—*Liability of shipowner*—Unpaid vendor of goods shipped, holding Mate's receipt—Shipowner refusing to redeliver goods in recognition of vendor's charge—*Liability of*—Purchaser hypothecating goods shipped before notice to shipowner of vendor's charge—*Effect of*.

An unpaid vendor of goods shipped on board a steamship who holds the Mate's receipt for the said goods, with the benefit also of a charge clause in his contract of sale, has not only a right against the defaulting purchaser, but also a right in damages against the shipowner on the basis of an action for conversion or trespass, where the shipowner refuses to recognize the unpaid vendor's deed that the shipowner has notice before delivery at the and even if the ship owner

shipowner. Such a hypothec better title to the mortgagee possessed. A.I.R. 1931 Cal. 110 KUMCHAND JUTE MILL TAL BAG CO.

173 I.C. 486 = 10 B.C. 528 = A.I.R. 1937 Cal. 319.

Mate's receipt—If document of title—Right of person holding Mate's receipt—States in—Value of—Bill of lading—Distinction.

The Mate's receipt is not a document of title to the goods shipped. Its transfer does not pass property in the goods nor is its possession equivalent to possession of the goods. It is not conclusive and its statements do not bind the shipowners as do the statements in a bill of lading signed within the master's authority. It is, however, *prima facie* evidence of the quantity and condition of the goods received and *prima facie* it is receipt or possessor who is entitled to have the bill of lading issued to him. But if the Mate's receipt acknowledges receipt from a shipper other than the person who actually receives the Mate's

n that ship-
freight, the
deed bound
on. If the

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as entitled to be

express notice that he is not to issue the bill of lading without the Mate's receipt or to any one but the person

(1938) 1 M.L.J. 834 (P.C.)

Rules governing navigation in Hughts—R. 5—
"Turning points or bends of the river"—Meaning.

Although in construing the phrase "turning points or bends of the river" Court has to refer not to the navigable channel but to the river as a whole and in all its breadth, yet such considerations are not necessarily conclusive of the question, and the Court has to consider the matter with reference to the channel and from the practical standpoint of a navigator. The prohibition cannot be supposed to extend to all parts of the river where the channel is not completely straight, but must be interpreted with regard not only to the aggregate amount of deflection but to its gradualness or abruptness, which is only to say that the deflection must be considered in relation to the distance to be travelled. (Sir George Rankin.) MALACCA MARU v. MARINFELS.

176 I.C. 888 = 1938 O.L.R. 378 =

11 B.P.C. 68 = 1938 A.L.R. 720 = 4 B.R. 819 =

43 C.W.N. 29 = A.I.R. 1938 P.C. 263 =

(1938) 2 M.L.J. 892 (P.C.)

purpose. There is also
action which cuts down
wide words intentionally used

and S. 6 puts no limitation of time within which such

This power may be exercised in Court or before the case is Court, or it may be exercised in that Court. All the three sections are easily reconcilable. That being so, there is no reason why the very wide words of S. 13 should not receive their full and proper meaning. Thus S. 13 permits the Public Prosecutor to withdraw in the Sessions Court from the prosecution or an accused person at any time before an order of conviction or acquittal has been passed even though the Commissioner or District Magistrate has not exercised his discretion to refer the case to the Council of Elders, before the trial in that Court commenced. (Rupchand Bistaram, Ag. J.C. and Loh, A.J.C.) MINHO v. EMPEROR. 32 S.L.B. 129 = 173 I.O. 325 = 10 B.S. 201 = 39 Cr.L.J. 294 = A.I.R. 1938 Sind 9.

Ss. 12 and 13—Reference to Council of Elders—If and when can be done without reference to Court.

Where an accused person is charged with an offence punishable with death or transportation for life, his trial

SIE LAND.

really commences when the case is proceeded with in the

173 I.C. 325 = 10 R.S. 201 = 39 Cr.L.J. 294 =
A.I.R. 1938 Sind 9.

SIE LAND—See LANDLORD AND TENANT—SIE
LAND.

SLANDER. See TORT—DEFAMATION.

SLANDER OF TITLE. See TORT.

A.I.R. 1938 Nag. 84.

SOCIETIES REGISTRATION ACT (1860), Ss. 3,
and 19—*Presumption of proper registration.*

Presumption that an association is duly registered
arises not on the certificate of registration granted by the
Registrar under S. 3, but on the copies of the Rules
Regulations and Memorandum certified under
which constitutes them *prima facie* evidence
matters therein contained. (*Lord Thackerston.*)

DER SINGH v. SUNDER SINGH. 65 I.A. :

172 I.C. 993 = I.L.R. 1938 Lah

38 S.L.R. 350 = 1938 A.L.J. 194 =

1938 O.W.N. 245 = 1938 O.L.R. 104 =

1938 A.L.R. 138 = 1938 A.W.R. (P.O.) 74 =

40 P.L.R. 247 = 4 B.R. 317 = 66 O.L.J. 524 =

10 R.P.C. 202 = 1938 O.A. 371 = 42 O.W.N. 930 =

1938 M.W.N. 621 = 1938 P.W.N. 548 =

40 Bom.L.R. 724 = 47 L.W. 239 =

A.I.R. 1938 P.O. 73 = (1938) 1 M.L.J. 359 (P.O.).

SPECIFIC RELIEF ACT (1877), S. 12

—S. 27—Scope—Duty of executing Court under—

ACT, Ss. 58 AND 100.

40 Bom.L.R. 545.

—Contract to sell—Terms of conveyance—Duty of
Courts.

ing specific performance of an agreement to sell, is
bound to put the parties in the same situation in which
they were on the date of the agreement. The recitals of
representation in the sale deed must reflect the spirit of

—Right to—Doctrine of mutuality—Meaning of—

A contract to be specifically enforceable must be
mutual, which means that at the time of the contract is
must be enforceable by either of the parties against the
other. Thus, if on account of certain circumstances
existing at the time of the contract, as for example pers
onal incapacity of one of the parties or the nature of the
contract itself, it was incapable in law of being enforced

174 I.C. 463 = 4 B.R. 446 = 10 R.P. 523 =
A.I.R. 1938 Pat. 102.

—S. 6 (b)—Construction and scope—Decree in con-
travention of—If void—Power of executing Court to
refuse execution—Question whether decree is in contra-
vention of section—If can be raised in execution S. 27
—Distinction.

S. 6 (b) of the Santal Parganas Settlement
Regulation clearly imposes on a Court which is
about to pass a decree a duty to observe the rule

A suit based on title under b, 8 of the Specific Relief
Act should not be allowed to be changed into one under
S. 9 in which the cause of action is not title but dispos-
session. But this should not be taken to mean that
possession cannot be evidence of title or that a finding
as to title based solely on evidence of possession is ille-
gal. (*Weston.*) ABDUL JABBAR v. GANESH.

1938 A.M.L.J. 54.

—S. 9—Decree or order under—If revivable under
S. 115, C. P. Code.

under S. 115, C. P. Code, from
may be passed under S. 9 of
by any subordinate Court,
(*Terma, f.*) BADRULZAMAN v.
H. 1938 A.W.R. (H.C.) 598 =
L.J. 864 = 1938 A.L.R. 887 =
A.I.R. 1938 All. 935.

—Ss. 12 and 27-A—Oral agreement to lease—If
can be specifically enforced.

An agreement to lease which does not create a present
demise is not required to be in writing or registered, and

That is not so in the case of a decree alleged to be in
contravention of S. 6. The question whether the amount
awarded is in excess of that permitted by S. 6 (b) is one
which ought properly to be agitated before and consi-
dered by the trial Court and passes the decree or in

Regulation. (*Agarwala*)

KUMARI v. KISHORILAL

177 I.C. 253 =

SPECIFIC RELIEF ACT (1877), S. 14.

—Ss. 14, 15 and 16—*Relative scope and applicability of—Prior and later agreements to sell—Single item common to both—Reliefs in respect of—Considera-*

favour.

Held, that the question whether the plaintiff was entitled to relief depended on the application of Ss. 14 to 17 of Specific Relief Act which "constitute a complete code within the terms of which relief of the character

SPECIFIC RELIEF ACT (1877), S. 38.

the plaintiff institutes a suit for specific performance just when the period of limitation is about to expire, no decree for specific performance can be granted, because, the third party, SUBBARAYADU M.W.N. 1158, *claiming up false*

is an equitable

and a plaintiff who sets up a false case cannot expect a Court of equity to grant him such relief. (*Leach, C.J. and Madhavan Nair, J.*) SUBBARAYADU v. TATAYYA. 1937 M.W.N. 1158.

—Ss. 25 (b) and 18 (a)—*Contract to sub-lease for lease had only two years to running renewal of his lease of his contract. attract to sub-lease for five years lessor had only two years to sub-lease, but under the terms of the lease, he had to renew the lease, and to sub-lease he got a lease for those terms for another five years from the date of the renewal of the lease. In the ground that he is a transferee of the lease, the plaintiff is entitled to specific performance of the contract.*

—Ss. 18 (b) and 25 (b)—*Lessor not entitled to sub-lease without lessor's consent—Agreement to sub-lease without such consent—If can be enforced specifically—Objection to specific performance raised by sub-lessee in second appeal—Permissibility.*

S. 18 of the Specific Relief Act lays down certain rights which the purchaser or the lessee of a property has against the vendor or lessor who, having an imperfect title thereto, contracts to sell or let. It does not make the contract invalid. Where, therefore, a lessee who has no right to sub-lease without the consent of the lessor enters into a contract to sub-lease without such consent, there is no reason why the contract cannot be specifically enforced if the lessee obtains the concurrence of his lessor when called upon to do so by the sub-lessee or by the Court. An objection that the lessee is not entitled to claim specific performance of the contract to sub-lease as he did not obtain the consent of the lessor for

—S. 31 (b)—*Absence of notice of earlier contract—Onus.*

The onus is upon the subsequent purchaser to prove that he is a transferee without notice of the earlier contract so as to bring himself within the exception provided by S. 27 (b) of the Specific Relief Act. (*Madhavan Nair, J.*) DEBENDRA NATH MITRA v. LALIT KRISHNA MITRA. 42 C.W.N. 1090.

—Ss. 27-A and 12—*Oral agreement to lease—If can be specifically enforced. See SPECIFIC RELIEF ACT, Ss. 12 AND 27-A. I.L.B. (1938) 1 Cal. 563—42 C.W.N. 97—A.I.B. 1938 Cal. 136.*

—S. 31—*Scope of—Failure to avail of remedy—Effect.*

Where a purchaser because of a clerical mistake in the sale deed, fails to obtain mutation of names, he could at that stage have instituted a suit under S. 31 of the Specific Relief Act. But he was not bound to do so, as

he fact of its being a purchaser of the property was established by the evidence. (*Madhavan Nair, J.*) BARSATI v. O.A. 823—C.O. 104—M.W.N. 1074.

—Ss. 33 and 34—*Rectification—Powers of Court—Suit for sale on mortgage—Wrong description of property—Oral evidence as to mistake—Admissibility—Relief on basis of rectification—If awardable. See LIMITATION ACT, ART. 96. 47 L.W. 661—(1938) 1 M.L.J. 806.*

—S. 38—*Rescission of contract—Condition as to repayment of benefit—Scope and effect of*

Mere delay in suing may not be sufficient to deprive a plaintiff of the relief of specific performance, but where a plaintiff has taken no steps to prevent the other party from entering into a contract with a third party in respect of the subject matter of the contract, and the third party expends money, e.g., by improving the property and discharging an encumbrance on the property in respect of which a contract of sale is entered into, if

SPECIFIC RELIEF ACT (1877), S. 39.

SPECIFIC RELIEF ACT (1877), S. 42.

He has to make the payment because the contract is voided, the contract is not voided on condition of his making such payment. The Court in passing a decree in a suit by the aggrieved party for rescission of the con-

paying to the other party the amount (benefit) received under the contract within a certain time, this does not

sequence that on his failure to make this payment, not that his suit shall fail altogether but that the other party can proceed to execute the decree against him for recovering the amount. (*Mysa Bu and Maikury, J.J.*) REV. PATRICK v. MAUNG E. A.I.B. 1938 Rang. 408.

—S. 39—Cancellation—Person not a party to deed, if can seek.

(Under S. 39 of the Specific Relief Act it is not necessary

ed by him as a condition to his recovering possession of the alienated property. Where the alienor has chosen in advance the money to the minor with knowledge of the minority, it would not be proper to order a refund. But where an innocent purchaser or alienee has advanced money to the minor without any knowledge of the minority, an order for refund can properly be made against the minor, even though there has been no misrepresentation on the part of the minor as to his age. (*Madhavan Nair, O.C. J.*, and *Krishnarasami Ayyangar, J.*) HANUMANTHARAO v. SITHARAVAYYA. 1938 M.W.N. 1076—48 L.W. 604.

—S. 42—Applicability—Suit to declare that property is judgment debtor's and attachable and saleable.

Two judgment-debtors allowed the wife of one of them to take mutation on a false allegation of an oral gift of certain share to which they were entitled and to allege possession under it. to acquiesce in the mutation a suit for a declaration that longed to the judgment debtors was held to be not saleable in execution of his decree.

—S. 42—Association and members—Declaration of members' right to inspect records—If can be granted.

In a suit to restrain the defendant Association from preventing the plaintiffs who are its members from

Court—Injunction maintaining status quo ante not granted.

within the scope of the suit, and the effect of which might be to embarrass other parties and complicate other transactions which are not before the Court. (*Mukherjee, J.*) THE ALL-INDIA TEA AND TRADING CO., LTD. v. UPENDRA NARAYAN SINHA. 42 C.W.N. 774—67 C.L.J. 143.

—S. 42—Declaratory suit—Cause of action—Attempt to attach plaintiff's goods.

prior to suit.

Where the plaintiff is a co-sharer and her possession was as such and where prior to the declaratory suit, she had obtained mutation of her name over zamindari as well as house property, and where such possession as could under the circumstances be obtained was obtained by the plaintiff, her suit does not offend any provision of law contained in S. 42 of the Specific Relief Act. (*Collister and Baspa, J.J.*) KOMAL v. GUR CHARAN PRASAD. 175 I.C. 263—10 B.A. 661—1938 A.L.R. 392—1938 A.W.R. (H.O.) 168—1938 A.L.J. 235—A.I.R. 1938 All. 242.

—S. 42—Declaratory suit—Maintainability—Suit to declare that plaintiff is gaddanahin of Kankash—Allegation by defendant that he is in joint possession of properties with plaintiff—Prayer for possession—If necessary.

defendant who merely claims to be in joint poss-

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-CHAMAN
B. 407—
Lab. 574.
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SPECIFIC RELIEF ACT (1877), S. 14.

—Ss. 14,
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suit for specific performance of the agreement in his
favour.

Held, that the question whether the plaintiff was
entitled to relief depended on the application of Ss. 14
to 17 of Specific Relief Act which "constitute a complete
code within the terms of which relief of the character

apply as it could not be said that the plot in question
bears only a small proportion to the whole, that S. 15
also did not apply as the plaintiff had expressed his un-
willingness to pay the purchase price for the remaining
plots, on payment of which alone the plaintiff can get
specific performance; that S. 16 cannot be said to apply,
for there was only one contract to sell, and in the absence
of evidence to the contrary, the presumption is that it is
an entire contract intended to be dealt with as a whole
an
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St
177 I.O. 746=11 R.L. 356=40 P.L.R. 202=
A.I.R. 1938 Lab. 360.

—Ss. 18 (b) and 25 (b)—Lessee not entitled to
sub-lease without lessor's consent—Agreement to sub-lease
without such consent—If can be enforced specifically—

enforced if the lessee obtains the concurrence of his
lessor when called upon to do so by the sub-lessee or by
the Court. An objection that the lessee is not entitled

—S. 22—Delay in suing—If bar to relief.

Mere delay in suing may not be sufficient to deprive a
plaintiff of the relief of specific performance; but where a
plaintiff has taken no steps to prevent the other
party from entering into a contract with a third party
in respect of the subject-matter of the contract, and the
third party expends money, e.g., by improving the prop-
erty and discharging an encumbrance on the property
in respect of which a contract of sale is entered into, if

SPECIFIC RELIEF ACT (1877), S. 38.

or specific performance
■ about to expire, no
n be granted, because,
that would be doing an injustice to the third party.
, J.) SUBBARAYADU
1937 M.W.N. 1158,
iff setting up false

relief lying in the discretion of Court; and a plaintiff
who sets up a false case cannot expect a Court of
equity to grant him such relief. (Leach, C.J. and
Madhavam Nasr, J.) SUBBARAYADU v. TATAYYA.
1937 M.W.N. 1158.

—Ss. 25 (b) and 18 (a)—Contract to sub-lease for
ad only two years to
renewal of his lease
his contract.
to sub-lease for five
or had only two
under the terms of
his unexpired lease he had a right to renew the lease,
and subsequent to the contract to sub-lease he got a
renewed lease in accordance with those terms for another
period, his claim for specific performance of the contract
to sub-lease cannot be refused on the ground that he is
not in a position to give the lessee a title free from
reasonable doubt (Nasim Ali and Mukherjee, J.J.)
GOKUL CHANDRA v. HAJI MOHAMMAD,
I.L.R. (1938) 1 Cal 563=176 I.O. 832=11 R.O. 173=

I.L.R. (1938) 1 Cal 563= 42 C.W.N. 97=
A.I.R. 1938 Cal. 136.

—S. 27 (b)—Absence of notice of earlier contract
—Onus
The onus is upon the subsequent purchaser to prove

enforced. See SPECIFIC RELIEF
I.L.R. (1938) 1 Cal. 563=
W.N. 97=A.I.R. 1938 Cal. 136.
f—Failure to avail of remedy—

Effect.
Where a purchaser because of a clerical mistake in the
sale deed, fails to obtain mutation of names, he could at

—Ss. 33 and 34—Rectification—Powers of Court

—Suit for sale on mortgage—Wrong description of
property—Oral evidence as to mistake—Admissibility—
Relief on basis of rectification—If available. See
LIMITATION ACT, ART. 96. 47 L.W. 661=
(1938) 1 M.L.J. 608

—S. 38—Rescission of contract—Condition as to
repayment of benefit—Scope and effect of

SPECIFIC RELIEF ACT (1877), S. 42.

owner is not valid beyond her life time, and the widow dies pending the litigation, it cannot be held that the plaintiff can no longer continue his suit on the ground that the widow having died he is entitled to sue for recovery of the property concerned. The proviso to S. 42 of the Specific Relief Act does not prevent plaintiff from prosecuting his suit for recovery of the property, although if it to get any real benefit he has to follow suit for recovery within the period of time legal for him to prosecute his suit for di-

SPECIFIC RELIEF ACT (1877), S. 56.

Where the plaintiff claims to be a trustee and administrator of certain institution of which neither he nor defendant is in possession or control of the management, a suit for mere declaration under S. 42 is maintainable; and where it is not open to the plaintiff to pray

extent of share in *tauzi* in estate—Absence of prayer for cancellation or correction of entry in land registry—Effect—Suit—If maintainable.

A suit for a declaration that certain *tauzi* should correspond of the original estate cannot be

to supply electricity—Start of work to supply electricity by Government within area of license—Licensee, if enti-

under
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—S. 42.

Maintainable—

administrator.

defendant in possession or control of institution—Institution against defendant—If further relief.

J. CHANDI RAM = SECRETARY OF STAT

SPECIFIC RELIEF ACT (1877), S. 42.

with him, it is not necessary for the plaintiff to include a prayer for possession but he must however include a prayer for ejectment of the defendant. It is open to him to sue also for an injunction restraining the defendant from interfering with his rights as a manager of the khankah. (*Bhude, J.*) MOHAMMAD MUSA v. NABI BAKSH. 177 I.C. 781=11 B.L. 364=40 P.L.R. 516=A.I.R. 1938 Lah. 616.

—S. 42—Declaratory suit—When maintainable.

Under S. 42 of the Specific Relief Act make a declaration where the plaintiff seeks further relief than a mere declaration to do so. Where a plaintiff asked that the record of rights was wrong and might be corrected, such a suit is maintainable. (*Ghose, J.*) BHABADAS MUKHERJEE KAMINI DEBI.

—S. 42—Declaratory suit—When maintainable—

Suit to declare decree nullity, owing to adverse interest of guardian ad-litem—Prayer for possession, if necessary.

character of decree, *adversum*—is a ground for refusal.

The granting of a declaratory decree is discretionary, and ordinarily the circumstance that the decree will not

conditions—Principles.

Though a Court in its discretion can refuse to give a declaratory decree and can also impose certain conditions.

judicial
rations.

HARAN
661=

168=

1938 A.L.J. 235=A.I.R. 1938 All. 242.

possession—Amendment of plaint—Permissibility in second appeal.

Plaintiff was the owner of certain jewels which he entrusted to one S for sale. S committed breach of trust and pledged them with the defendant Bank. S was convicted and the property was ordered to be returned by the plaintiff who got them. In revision, however, the High Court ordered the jewels to be returned to the Bank. Plaintiff who had the jewels with him handed them over to the Magistrate and at once filed a suit in the Civil Court for a declaration that he was entitled to possession of the jewels. He also at the same time applied to the Magistrate to retain the jewels

SPECIFIC RELIEF ACT (1877), S. 42.

or to send them to the Civil Court, and they were so sent.

Held, that the suit for bare declaration was not maintainable and that he was bound to ask also for possession, he having been not in possession of the jewels at the time he instituted the suit. The Court holding the jewels did not hold them as agent of the plaintiff, but as agent of the defendant.

Held, further, that the plea of non maintainability of

R. 63, C. P. C.—Frame of. See C. P. CODE, O. 21, R. 63. 47 L.W. 724=(1938) 1 M.L.J. 803.

—S. 42, Proviso—Applicability—Suit under O. 21, R. 103, C. P. Code—Claim to mere declaration

A.C.J. and Varma, J.) RAM CHANDRA GANGA BUX v. SUNDER LAL SINGH. 178 I.C. 862=

179 P.L.R. 120=19 Pat L.T. 918=

455=A.I.R. 1938 Pat 558.

as under—If applicant—Suit right in possession, for declaration of title—When available.

A mortgagee of occupancy right brought a suit the redemption after mutation had been attested for a declaration that only certain khasras had been redeemed and the others were wrongly included in the mutation. He alleged that he had got a correction mutation entered but it was rejected. The plaintiff was in possession of the property in suit.

Held, that the frame of the suit for a declaration was not incorrect. The Proviso to S. 42, Specific Relief

the redemption mutation was attested. The mere fact that the plaintiff himself tried to get correction made and failed afforded him no fresh cause of action. (*Almond, J.C. and Mr Ahmad, J.*) AZIZUR RAHMAN v. ABDUR RAHIM. 176 I.C. 486=11 B. Pesh. 12=

A.I.R. 1938 Pesh. 28.

—S. 42, Proviso—Scope of—Alienation by Hindu widow—Suit by reversioner for declaration that it is not valid beyond life time of widow—Death of widow pending suit—Effect—Suit—If can be continued—Discretion of Court.

Where a Hindu reversioner sues for a declaration that an alienation made by the widow of the last male

SPECIFIC RELIEF ACT (1877), S. 42.

owner is not valid beyond her life time, and the widow dies pending the litigation, ■ cannot be held that the plaintiff can no longer continue his suit on the ground that the widow having died he is entitled to sue for recovery of the property concerned. The proviso to S. 42 of the Specific Relief Act does not preclude plaintiff from prosecuting his suit for a recovery of the property, although if the plaintiff has to follow it up with a suit for recovery within the period of limitation. ■ ■ ■

SPECIFIC RELIEF ACT (1877), S. 56

Where the plaintiff claims to be a trustee and administrator of certain institution of which neither he nor defendant is in possession or control of the management, a suit for mere declaration under S. 42 is maintainable, and where it is not open to the plaintiff to pray

65 I.A. 106 = I.L.R. 1938 Lah. 63 = 32 ■ I.R. 350 = 1938 A.L.J. 194 = 1938 ■ W.N. 245 =

Suit to declare decree void—Maintainability without prayer for possession or injunction. See MINOR—DECREE AGAINST. 40 Bom.L.R. 127.

—S. 42, Proviso—Scope—Suit for declaration of extent of share in tawar in estate—Absence of prayer for cancellation or correction of entry in land registry—

an application under S. 45 of the Specific Relief Act. (Panchridge, J.) GARRISON ENGINEER v. CORPORATION OF CALCUTTA. 42 C.W.N. 789.

—Ss. 54 and 57—Grant by Government of license to supply electricity—Start of work to supply electricity by Government within area of license—Licensee, if enti-

as to prayer for a cancellation or correction of entry in the Land Registration Register. The Civil Government and therefore that also is not a considera-

defendant in possession or control of institution—Injunction against defendant—If further relief. (J.) CHANDI RAM v. SECRETARY OF STATE. 40 P.L.R. 160.

SPECIFIC RELIEF ACT (1877), S. 56.

—S. 56—Grant of injunction—Discretion of Court.

Injunction is a discretionary form of specific relief, and under S. 56 of the Specific Relief Act may refuse to grant an injunction if conduct has disentitled himself to it. *Mohammad, f.* CHANDI RAM v. STATE FOR INDIA IN COUNCIL. 40 P.L.B. 577.

—S. 56—persons from doing exclusive Custom making

cular houses. Nor can a custom making scavenging rights *res commercium* be recognised by the Courts, as it is contrary to the public good and unreasonable. The custom, if allowed, would turn out to be an oppressive monopoly, and can never be sustained in a Court of Law. *(Venkataramana Rao, f.) RAGHURU v. ERRAIYA* 1938 M.W.N. 806—48 L.W. 258—A.I.R. 1938 Mad. 831.

—S. 56—Scope—Act done by public officer in discharge of duty under S. 37, Mysore Land Revenue Code—Suit for injunction to restrain—Bar of.

It is not open to a Civil Court to prevent a public officer, such as the Deputy Commissioner acting under

STAMP ACT (1899), S. 12.

AMRITSAR.

40 P.L.B. 319—

175 I.C. 245—11 E.L. 91—

A.I.R. 1938 Lah. 369 (F.R.).

struck

flowed

debtor

would be a mere "acknowledgment" on which a stamp

it would be a "bond" and

Y. *(Teh Chand and Dalip*

D. DAULAT RAM v. ATA

7 I.C. 270—11 E.L. 285—

33—A.I.R. 1938 Lah. 603.

partition—If an instru-

ment of partition.

A decree for a partition is an instrument of partition (*vide*, S. 2 (15) of the Stamp Act) and as such has got to be engrossed on stamp paper. *(Tehchand, f.) RAM NARAIN KAUL v. BISHAN RANI.* 40 P.L.B. 2—A.I.R. 1938 Lah. 321.

—S. 2 (15)—Instrument of partition—Preliminary decree in partition suit—Strangers in possession also made parties—Directions as to division, and as to payments of definite sums by parties inter se—Nature of decree.

Where in a suit for partition of joint family property to which strangers in possession of certain items of pro-

in same Court for grant of—Competency.

An Injunction to restrain proceedings in a Court,

1938 M.W.N. 666—A.I.R. 1938 Mad. 307.

—S. 17—Mortgage deed—What amounts to,

adopted any exhaustive list
lation may be done in
ect of the cancellation
unfit for further use in
and whether this has

Per Bhude, f.—It is well established that when it is open to a person to sue for possession, he cannot be

determined on an examination of the instrument in question. The section does not lay down that the

it would be impossible
to use the stamp again.
a promissory note clearly

and Din Mohammad, f.) MASJID SHAHID GANJ v. SIHROMANI GURDWARA PARBANDHAK COMMITTEE

mere fact that the date on which the executant initialled does not appear on any of them, does not make it "not

STAMP ACT (1899), S. 35.

effectually
ZAMINDA

—S. 35—
as agree
SCH. I, ARTS (1), 5 (c), AND S. 35.

Where the execution of a document which is not duly stamped is admitted by one of the defendants, the document cannot be rejected as against him (*Jas Lal, J.*) DULI CHAND MAIDHAN v. PANTHI.

178 I.C. 197 = 40 P.L.R. 231 = A.I.R. 1938 Lah. 511

—S. 35—Entry as mortgage made in ordinary books not duly stamped—Secondary evidence of such entry

Where a partition decree falls strictly within the terms of S. 2 (15) of the Stamp Act, but which is not duly engrossed on non-judicial stamp of proper value, and which was in fact acted upon and execution also ordered,

the Court w. admitting it S. 35 of the Act shall not be taken into account which such (Burn and NAMMAYYA

the Court w. admitting it S. 35 of the Act shall not be taken into account which such (Burn and NAMMAYYA

—S. 35—Promissory note—Insufficiently stamped—Suit on debt maintainability. See EVIDENCE ACT, S. 91.

—S. 35—
and applicab
note—Admiss
extend limits
Where an
contains an
precluded by

11 B.N. 163 = 1938 N.L.J. 145 =
A.I.R. 1938 Nag. 294.

STAMP ACT (1899), S. 36.

Promissory note insufficiently
f payment on—Admissibility

note is insufficiently stamped under S. 35 of the Evidence Act, if there is an endorsement of payment on the an acknowledgment of the evidence for the purpose of (Madhavan Nair, J.)

1938 M.W.N. 875 = 48 L.W. 498 =
(1938) 2 M.L.J. 846.

—S. 35—Scope—Promissory note not properly stamped—Admissibility—Suit on debt—Maintainability. See EVIDENCE ACT, S. 91.

1938 M.W.N. 722 = (1938) 2 M.L.J. 189 (F.B.).
—S. 36—Document admitted in evidence—If can be challenged later on—Admission in evidence—If not

by no stretch of imagination can it be said that the Judge did not apply his mind to the admission of the document. (Thomas, C. J. and Zia-ul-Haque, J.)
AVADH SINGH v. TAHKUR RANDHIR SINGH.

178 I.C. 358 = 1938 O.L.R. 479 =
1938 O.A. 838 = 1938 A.W.R. (O.C.) 114 =
1938 O.W.N. 1085.

—S. 36—"Admitted in evidence"—Meaning of.
after deciding the
ot, it must be held
within the meaning
impossibility cannot
he Judge endorses
it is insufficiently
in, and the same
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tted in evidence.
i v. NAGABUSHA-

1938 M.W.N. 900 = 48 L.W. 494 =
A.I.R. 1938 Mad. 938 = (1938) 2 M.L.J. 478.

—S. 36—Appellate Court, when precluded from questioning a wrong admission of a document.
Where a trial Court admits only a part of an insuffi-

176 I.C. 312 = 11 R.Pesh.
A.I.R. 1938 Pe

1263

STAMP ACT (1899), S. 36.

—S. 36—Document admitted during minority of party—Improper representation—Right to impugn admissibility.

Where a document was exhibited in proceedings in which the minor was not properly represented, and where on his attaining majority, he was allowed to reopen the whole proceedings, he is not precluded from impugning the admissibility of such a document. S. 36 of the Stamp Act cannot debar him. The admission of evidence though it is an act of court, it is a matter in which parties have a voice. (*Weston*.) **HARI SINGH v. KUNDAN MAL.** 1938 A.M.L.J. 74.

—S. 36—Objection subsequent to admission of document—Entertainability.

It is not open to a Court to entertain an objection to the admissibility of a document on the ground that it is not duly stamped, after it has once been admitted in evidence. (*Jai Lal, J.*) **DULICHAND MAIDHAN v. PANTHI.** 178 I.C. 197 = 40 P.L.R. 231 = A.I.R. 1938 Lah. 511

—Ss. 37 and 42 (2)—Applicability—Partition decrees, not stamped—Execution ordered—Stamping—Execution proceedings, if valid respectively.

Held, that S. 37 of the Stamp Act, could be invoked for it had no application and that the case was not one in which an instrument had been written on a stamp of sufficient amount, but of improper description.

Held, further, that there was no provision of law which could validate a decree with retrospective effect and the terms is not retrospective in its *Lakshmana Rao, J.J.*

—S. 40 (1) (a) and Reference to High Court—Conclusiveness—Ss. 60 AND 40.

1938 A. 765

—Ss. 60 and 40—Reference under S. 60—Stage when to be made—If competent after impounding and Collector's certificate under S. 40 (1) (a).

The proper time for making a reference under S. 60 of the Stamp Act is, when the Court is in doubt as to the amount of duty payable and certainly not after the document had been impounded by it and the Collector

A.I.R. 1938 Oudh 226 (F.B.).

—S. 60 (1)—Abatement—Death of party—Effect.

A reference made under S. 60 (1), Stamp Act, does not abate or become incompetent by reason of the death of the party who has executed the document which has given rise to the reference. (*Courtney Terrill, C.J., James and Manohar Lal, J.J.*) **KHETRAMONI DERVA.** In the matter of, 17 Pat. 95 = 172 I.C. 847 = 4 B.R. 198 (1) = 10 R.P. 357 (1) = 18 Pat.L.T. 933 = A.I.R. 1938 Pat. 33 (S.B.).

STAMP ACT (1899), Art. 35.

—Art. 1—Applicability—Acknowledgment of correctness of account—Stamp duty.

An acknowledgment of the correctness of account does not require a stamp to be valid. (*Dhavit, J.*) **RAM-PRABHA OJHA v. BISHUNATH OJHA.**

174 I.C. 585 = 4 B.R. 461 = 10 R.P. 525 = A.I.R. 1938 Pat. 139.

—Sch. I, Art. 1—Applicability—Admission of liability saving limitation—Stamp duty—If necessary. See LIMITATION ACT, S. 19.

—Sch. I, Arts. 1 and 5—Balance struck in account book—If acknowledged or agreement.

In a suit based on a balance struck in the account book of the plaintiff, the phraseology of the account was "baql rehe lene lekha ker ke char so tees rapia." This was signed by the defendants.

Held that the document in suit was an agreement and not a mere acknowledgment as it contained a promise to pay. (*Jai Lal, J.*) **DULICHAND MAIDHAN v. PANTHI.** 178 I.C. 197 = 40 P.L.R. 231 = A.I.R. 1938 Lah. 511.

PRASAD v. MT. SUNKI

177 I.C. 889 = A.I.R. 1938 Nag. 464.

—Sch. I, Arts. 33 and 55—Applicability—Hindu widow in possession of property allotted by decree in partition suit with interest similar to that of a life-tenant.

with rights in the said properties similar to those of a Hindu widow on the estate of her deceased husband and was in possession of the properties in virtue of the decree and was in enjoyment of the usufruct thereof. She desired to surrender her interest in the properties to her sons who would succeed to the property in the ordinary course of her death and for that purpose she executed a deed whereby she transferred the right to

instrument of gift
to the Stamp
; (2) that stamp
properties conveyed

as described in the deed, the value to be stated in the deed being not the capital value of the property conveyed, but the present value of the life interest of the widow, whatever that might have been at the time of the execution of the deed. (*Courtney Terrill, C.J., James and Manohar Lal, J.J.*) **KHETRAMONI DERVA.** In the matter of, 18 Pat.L.T. 933 = 17 Pat. 95 = 172 I.C. 847 = 4 B.R. 198 (1) = 10 R.P. 357 (1) = A.I.R. 1938 Pat. 33 (S.B.).

—Sch. I, Art. 55 (a) (iv)—Applicability—Lease—Monthly tenancy—No definite term provided.

STAMP ACT (1899). Sch. I. Arts 40.

SUCCESSION ACT (1925), S. 211.

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1938 A.L.B. 409-1938 A.W.R. (H.C.) 195=
1938 A.L.J. 324-A.I.R. 1938 All. 304.

Sch. I. Arts 40 and 57-Applicability-Security
In

the

security bond cannot amount a contract, as the Court is
not a juridical person and is incapable of contracting.
(*Leach, C. J., Varadachariar and Nockett, J.J.*) ABU-
BACKER LABBAI v. CHINNATHANBI ROWTHER.

I.L.R. 1938 Mad. 460-174 I.C. 587-
10 B.M. 725-1938 M.W.N. 190-47 L.W. 164-
A.I.R. 1938 Mad. 262-(1938) 1 M.L.J. 159 (F.B.).

Sch. I, Art. 55-Applicability-Hindu widow
in possession of property allotted to her by decree of

require
Act.

STAY
pleting
stay-

The question of status of parties is of course one to
be decided according to the law of domicile of the

A.I.R. 1938 All. 640

S. 63 (a)-Execution of will-Validity-
Testator affixing his mark-His hand guided by another
in doing so.

any assistance. (*McNair, J.*) AMULYA KUMAR
BOSE, In the goods of. 42 C.W.N. 649

S. 63 (c)-Due attestation-Presumption.

Where the testator was roused from unconsciousness
in order to sign the will and the attestation took place
immediately after his signature and the attesting witness
es were in close proximity to the testator in the same
room.

Held, that it was not an excessive presumption to say

which takes away the right of revision by High Court.
(*Bhida, J.*) BUA DITTA v. SAHIB DIAL.

(*Wadia, J.*) RATANSHAW DINSHAWJI v. BAMANJI.
175 I.C. 200-10 B.B. 527-40 Bom I.R. 141-
A.I.R. 1938 Bom 238.

Succession Act which limits the power of dispo-
the heir-at law over such estate, merely because
of administration has been made. Nor does

the Senior Sub Judges have been invested with the power to hear applications under the Succession Act, 1925, have not been so empowered by a Notification of the Local Government published in the local official Gazette as required by S. 388, the normal course of law being that such applications should be made to the District Judge and not to the Court of the District Judge.

SUCCESSION CERTIFICATE ACT (1889), S. 244

(Almond, J.C.) MT DURGA DEVI v. RUP CHAND.
177 I.O. 705-11 B. Pesh. 34-
A.I.R. 1938 Pesh. 62.

SUCCESSION CERTIFICATE ACT (VII OF 1889), S. 244—Scope—Promissory note in favour of manager of Hindu joint family—Death of manager—Suit by survivors—Competency—Production of certificate after suit—Sufficiency. See **NEGOTIABLE INSTRUMENTS ACT, S. 8**. 40 Bom.L.R. 964.

SUFEDPOSH—Appointment of—Government servant in service—Eligibility.

The appointment as *sufedposh* of a Government servant with 20 years of service still to run and who cannot consequently take office for that period, is not justified although a competent substitute could be found to do the work. (Dobson) GHULAM QADIR v. CHAUDHRI LAKHI SINGH. 17 Lah.L.T. 21.

SUGAR EXCISE DUTY ACT (XIV OF 1934), S. 8—Applicability—Failure to submit return in form B under Art. 5 of the Sugar Excise Duty Order—If

SURETY BOND.

Failure to keep correct daily accounts as required by Art. 4 of the Sugar Excise Duty Order is not a failure to supply any information as is contemplated by S. 8 of the Sugar Excise Duty Act, but failure to keep any account at all, is an offence punishable under Art. 8 of Sugar Excise Duty Order. (Manohar Lal, J.) BEHARI RAM v. EMPEROR. 175 I.O. 631-4 B.R. 602-
10 R.P. 634-39 Cr.L.J. 610-10 Pat. L.T. 415-
1938 P.W.N. 426-A.I.R. 1938 Pat. 440.

—Art. 15—Power of Collector under to accept money in lieu of punishment.

The language of Art. 15 makes it quite clear that the Collector has the power to accept a sum of money only in lieu of punishment for breach of any of the Sugar Excise Duty Order, but not of the Sugar Excise Duty Act. But the imposition of a penalty under Art. 15 cannot be justified unless the duty payable after assessment has not been paid within the time fixed, having regard to S. 4 (1) of the Sugar Excise Duty Act. (Manohar Lal, J.) BEHARI RAM v. EMPEROR. 175 I.O. 631-4 B.R. 602-10 P. 634-
P. 415-
Pat. 440.

—Partis-

value of
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plaintiff
is share,
I. BOOK,
N. 161-
Mag. 149.
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NANDA v. SAILAJA CHARAN NANDA.
I.L.R. (1938) 2 Cal. 411-41 C.W.N. 667.

SURETY.

See also (1) C. P. CODE, S. 54 (4) AND 145.
(2) CONTRACT ACT, SS. (128-147)
(3) CR P. CODE, SS. 122 AND 514.

its own terms. Where bond definitely says that if a particular appeal (the number of which is specifically given in the bond) is decided in favour of the plaintiff (opposite party) the executant of the bond shall pay a certain amount into Court, the surety would be liable only in the particular event of the appeal ending in favour of the plaintiff. His liability cannot be extended to the contingency of their being a second appeal or Letters Patent appeal against the decision of the appeal specifically mentioned in the bond. So that if the appeal is reversed to the plaintiff, and the fact that it cannot be said that a Letters Patent appeal cannot be said to proceed against the surety under

—S. 8—Offence—Late payment of duty—Effect.

A late payment of the duty assessed is not an evasion of Excise Duty. EMPEROR. 10 B.

—S. 8.
Assessment in February 1937, for duty in respect of December, 1936 and January, 1937—Effect of—Order for payment earlier than end of February—Propriety—Payment by end of February—If sufficient—

the Collector's order made in January 1937, in February 1937, the order of assessment must be construed as an assessment of the duty payable for January, 1937, and the duty so assessed becomes payable only by the end of February 1937, though the Collector may fix an earlier date for payment. If the payment is made by the end of February, that is sufficient; the failure to pay on the date fixed by the Collector before the end of the month is not an offence under S. 8 of the Act. (Manohar Lal,

Failure to keep accounts—Offence.

SURETY BOND.

the bond. (*King and Krishnaswamy Ayyangar, J.J.*)
 PARAMASIVAN PILLAI v. RAMASWAMI CHETTIAR.
 48 L.W. 760—1938 M.W.N. 1158.

—Bond by—Construction—Undertaking to produce judgment-debtor on fixed date—Failure to produce him or to appear himself—Plea of illness of judgment-debtor—Surety, if absolved from liability. See C. P. CODE, S. 55 (4). 47 L.W. 408.

—Bond—Correction—Mistake of Court—Equities—Power to impose terms—Surety's liability—If extends to act of agent.

A judgment appeal, security that the Court, appeals were dismissed.

sons entitled to produce under the provisions of the Relief Act.

Held further that, on the bond as it stood, the surety was under no liability at all. As the bond had to be corrected before the surety could become liable, the Court was entitled, while correcting the bond, to direct the decree-holder to pursue his remedy first against the judgment debtor before executing the decree against the surety.

Held also that the costs of the second appeal could not be added to the decrees amount to secure which the bond was given. (*Stone, C. J. and Purani, J.*)
 MADHORAO NARAYANRAO v. HARINATH BHUKAJI.
 A.I.R. 1938 Nag. 259.

—Bond mentioning his liability to pay the debt in case petition for setting aside ex parte decree failed—Liability enforceable in spite of Court's granting of time to judgment-debtor.

If a surety's obligation under a bond was not merely to produce the debtor and to pay up if the debtor failed to do so but also to pay the debt at once if the petition to set aside the ex parte decree should prove unsuccessful, the surety's liability will not be affected by the granting of time by the Court to the judgment debtor and therefore 64 M.L.J. 114 is inapplicable to such a case.
 MOIDU v. ABDUL KHADEE.

48 L.W.

—Co-sureties—Rights—Having in excess of his share—

TELEGRAPH ACT (1885), S. 27.

(*Panchridge, J.*) KAMAL CH. CHUNDER v. SUSHILABALA DASSEE.
 42 O.W.N. 1258—A.I.R. 1938 Cal. 405.

—Discharge of—Creditor excluding debt guaranteed by surety from settlement by the Debt Conciliation Board. See CONTRACT. ACT SS. 134 AND 139. A.I.R. 1938 Nag. 413.

—Discharge of—Surety for judgment-debtor—Time granted to judgment-debtor by Court—If exonerates surety from liability. See C. P. CODE, S. 55 (4). 1937 M.W.N. 1165.

—Liability—Letter of guarantee—Construction—have been "liability" demanding against surety. W.B. 1194.

—Right of claim on his bond for as to grant

orders as the facts and circumstances of each case may call for after holding an enquiry into the allegations of maladministration. (*Costello and Birnau, J.J.*)
 PROHLAD CHANDRA FARICAL v. PABAN CHANDRA FARICAL.
 42 O.W.N. 1058—68 O.L.J. 433—A.I.R. 1938 Cal. 767.

—Security-bond—Form—Enforcement—Procedure—Right of suit—C. P. Code, S. 145.

A security bond may be, and usually is, given to the Court. Such bonds, though given to the Court, being really for the benefit of the creditor, may be enforced at his instance by the ordinary process of the Court. S. 145 of the C. P. Code, contains express provision for enforcement of such bonds by way of execution of the decree or order against the surety. The remedy under S. 145 is not exclusive, and does not preclude a regular suit on the security-bond to enforce the security. But where the bond is to the Court, it appears to be doubtful if the Court could sue upon it, or could even assign it for somebody else to sue upon it. (*Henderson and Birnau, J.J.*) MALDA DT. BOARD v. CHANDRA KETU NARAYAN SINGH. I.L.R. (1937) 2 Cal. 698—66 O.L.J. 373.

is entitled to claim is that he should share proportionately in the proceeds of the security when it is realized. behalf of the telephone owner without recovering the charge for the message beforehand, the head operator

TORT.

ACT (1937), §. 5.

NAPPA ▽ SWAMI AKHANDA NANDA

42 C.W.N. 1045.

the plaintiff, another relation, the communication is naturally privileged, as it is normally given in confidence, even if it is not expressly stated so in the letter itself. (*Fast Als, J.*) **SURYANARAYAN v. SITA-RAMAYAH**
174 LC 642-4 RR 468-

10 B.P. 544-⁸²³ A.I.B. 1938 Pat. 164.

—Defamation—Privilege—Report submitted by officer of Railway Company about conduct of subordinate servant in response to requisition by higher officer—If privileged—Report false in one particular—Presump-

In the case of a wrongful conversion of goods entrusted to a Railway Company, for transmission, the amount

to be made = L, R, L or R, V, EV \rightarrow steps v

sion in O. 20, C. P. Code, for the passing of a preliminary decree in a suit for damages in respect of personal injuries or in respect of breach of contract. If the princi-

defamatory matter contained malice. When there is a demand in an action for not required to substantiate, unless the plaintiff proves that proof no damages can be awarded. (Courtney-Terrell, C. J. and James, J.)
KHIROD RANJAN DAS v. MOHAMMAD WASY.
19 PAT. L. T. 188

19 Pat L.T. 186

reproduction of plaintiff's work of art—Intention of defendant—Relevancy.

A.I.R. 1938 Cal. 667.
 —Defamation—Right of action—Defamation of

42 C.W.N. 1045.
 ——— *Defamation—Libel—Implied defamation—Right of action.*

On general principles a plaintiff would be entitled to succeed in an action for libel on the ground that there was implied defamation. (*McNair, J.*) KRISH-

meant, it is not necessary that all the world should understand the libel; it is sufficient if those who know him can make out that he is the person meant. (*Duss. J. C.*) AHMEDALI v. EMPEROR.

175 I O. 9-10 R.S. 274-39 Cr L.J. 518-

AIR 1938

TORT.

liable in damages. See MASTER AND SERVANT—WRONGFUL DISMISSAL. 11 B.C. 161.

—Vicarious liability—Liability of master—Independent competent contractor—Negligence of—Liability

genuity and care. Where therefore the defendants engage competent persons for doing the work and leave the matter in their hands but the work is performed negligently and as a result part of the tree falls on the plaintiff's house causing cannot be held responsible persons whom they have employed. *MT. SULTAN DI D. NAND* 11 B.N. 2.

—Vicarious liability—Liability of master—Liability of ship owner must be

11 B.C. 161—66 O.L.J. 441—42 O.W.N. 179—A.I.R. 1938 Cal. 104.

—Vicarious liability—Negligence of fellow servant—Liability of master—Doctrine of common employment

the consequences of the negligence of another servant in the common employment, is well established as a part of the law of United Kingdom and may very well be adopted in this country as one based on principle of justice, equity and good conscience. In order to make that doctrine applicable, the person who is sought to be made liable for injuries caused by the negligence of his servant must show that the injured man and the man doing the injury were engaged in common undertaking. The rule of common employment cannot apply to a case where the negligence complained of relates to a period of time when the injured man was permitted to be off duty having been put practically on sick leave, as he and the servant guilty of negligence cannot be said to have been in any common employment at that time. Where the duty of the master of a ship was to see that everything on the ship was going on satisfactorily, and the duty of

TRADE MARK.

—Vicarious liability—Negligence of Master of Ship and its chief steward—Liability of ship-owner.

Where the master of the ship whose duty was to see that everything in the ship was going on satisfactorily and the chief steward whose duty was to look after the

66 O.L.J. 441—11 B.C. (1938) 1 Cal. 218—178 L.O. 719—11 B.C. 161—42 O.W.N. 179—A.I.R. 1938 Cal. 104.

—Wrongful attachment—Damages—Costs of legal

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158—
A.I.R. 1938 Lab. 334.

—Wrongful attachment—Suit for damages—Proof of malice and absence of reasonable and probable cause, if necessary—Damages for loss arising independent of the wrongful attachment, if can be recovered.

In order to entitle one to damages for a wrongful attachment of property, it is not necessary to prove malice and the absence of reasonable and probable cause. The plaintiff cannot in such suit be entitled to damages on account of any loss which arose not out of the original act of wrongful attachment, but out of something entirely independent. (*Allep, J.*) QAIM HUSAIN v. PIRSHU LAL. 1938 A.L.J. 654—177 L.O. 668—1938 A.I.R. 773—11 B.A. 209—1938 A.W.R. (H.C.) 447—A.I.R. 1938 All. 208.

TRADE MARK—Infringement—Colourable imitation—Facts to be considered.

It is a question of fact in every case whether the defendant's mark is or is not a colourable imitation of the plaintiff's mark. The surrounding circumstances of each case will have to be considered. It is not only necessary to look at the difference or at the resemblance between two given marks, but it is necessary to compare the two marks as a whole and then come to a decision. (*Allep, J.*) HIRANAND v. SARDAR MEHARSINGH. 173 L.O. 930—10 B.S. 234—A.I.R. 1938 Sind. 38.

—Infringement of—Cotton spools—Interlocutory injunction—Grant of.

Where in a suit based on an alleged infringement of a trade mark on cotton spools, the plaintiffs pray for an interlocutory injunction restraining the defendants from selling cotton spools which are similar in appearance to those sold by the plaintiffs, but there is no evidence of any actual cases in which the defendants' cotton has been sold to persons desiring to purchase the plaintiffs' cotton or of cases where illiterate customers have been misled by the defendants' design into thinking that they were buying plaintiffs' cotton, no interlocutory injunction should be granted simply because the two spools have various features in common. (*Panckridge, J.*) KERR & CO. v. AHMEDABAD COTTON MANUFACTURING CO. 177 L.O. 473—11 B.C. 249—A.I.R. 1938 Cal. 458.

—Infringement—Intention to deceive—Inference—Close similarity.

Held, that the different classes of servants, the *laskars*, on the one hand, and the chief steward and master on the other were engaged in different departments of duty so absolutely unconnected with each other as to make them not engaged in a common employment, and that consequently the owner of the ship cannot on the ground of common employment plead non-liability to an injury committed upon the *laskar* by the carelessness or negligence of the chief Steward and Master of the ship. (*Guba and Mitter, J.J.*) T. & J. BROCKIE-BANK, LTD. v. NOOR AHMED. 42 O.W.N. 179—11 B.C. (1938) 1 Cal. 218—176 L.O. 719—66 O.L.J. 441—11 B.C. 161—A.I.R. 1938 Cal. 101.

TRADE MARK.

Fraud is to be presumed and remains unexplained, be inferred from the circumstances no case of actual deception

imitation—Deception—Test.

The question for decision as to whether an alleged colourable imitation has or has not deceived anybody is to be decided with reference to the In passing off cases, the probability experts or persons who know the real or unwary customers, is the mischief against. Non-deception of middlemen

goods. There may be damage and yet there may be no passing off. Thus a suit cannot be entertained if it is brought by a person not entitled to an action to restrain a defendant from passing off goods as the goods of a third party. He can bring the action only when the representation is that the goods are his goods. (*C. Mehta, J.*) *HIRANAND v. SARDAR MEHARSINGH.*

173 I L. 830 = 10 B.S. 234 = A.I.R. 1938 Sind 38.

—Meaning of. See PENAL CODE, S. 478

66 C.L.J. 210.

—*Passing-off—Action for—Colourable imitation—Test—Right to relief.*

The plaintiffs who were manufacturers had on their goods a device or a trademark. The trade mark consisted of a firm in English at the top followed containing the picture of a motor bus passengers enjoying a ride therein and a tram car in the back ground. Underneath the pictorial label it was given in Devanagari script that the goods were manufactured in India. Below that appeared the numerals "4424" and underneath these numerals were the letters "H R". The last line of the device gave the length of the piece as 24 yards and towards the bottom a seal of the firm. The defendants were manufacturing black mulls with a trademark of the plaintiffs; that device name of the firm in English followed by a pictorial label

the letters of the figures showing the measurements of piece were exactly the same. There was also a seal in the corner. The plaintiffs alleged that the device adopted by the defendants was a colourable imitation of their device and prayed for an issue of damages against the defendants restraining them from their device, get up and labels and from attempting to pass off their goods as plaintiffs. It was established that the name of the letters "H R" were common to both also found that the plaintiffs' goods were known as "Motor Chapp". It was further proved that the plaintiffs' goods were known as "Lal Pagniwala" and that the dealers and customers who were particular in purchasing the goods of one of these firms generally expressed their

TRADE MARK.

essions. The character of the two firms was the

ible imitation and no goods of the plaintiffs entitling the plaintiffs or. The distinctive mark of the copied by the defendants and

there was no possibility of illiterate persons confusing the distinctive marks. That having regard to the fact that the plaintiffs came into the market only a long

of their device readers, no relief relating to law *Mohammad, J.*

A.I.R. 1938 Lah. 803.

form—Proof required.

of trade mark, the Court

must exercise its own judgment from the impression which it obtains from looking at the two products in question. In a passing off action, proof of actual deception is not necessary. It is quite sufficient if the plaintiff can prove the probability of deception. (*Braund, J.*) *NATIONAL CARBON CO. v. SEI SIN & CO.*

176 L.C. 597 = 11 B.R. 57 = A.I.R. 1938 Rang 99.

—*Passing off—Expiry of patent—Rival manufacturer manufacturing goods similar in appearance as patented goods and adopting to them descriptive name by which patented goods had been known—Manufacturer—*

descriptive of patented manufacturer could be held manufactured the goods in patents, and the only goods lay in the appearance of the goods so manufactured and the application to them of the name by which the patented goods had been known. It is conceivable that in the case of a patent, long ago expired, the evidence might possibly establish that the name had become distinctive of a particular manufacturer rather than descriptive of the goods, with

case of a descriptive word, it must be additionally name of goods (*Lord Ruxford*) WHEAT LTD.

R.P.O. 281 = A.I.R. 1938 P.C. 143 (P.C.).

—*Passing off—Action for—Passing off of books—Cause of action.*

Before a case of passing off of a book on the similarity

42 C.W.N. 511 = A.I.R. 1938 Cal 591.

—*Registration—Words merely descriptive of patented product—If can be registered—Descriptive words—If can acquire secondary meaning.*

TORT.

liable in damages. See MASTER AND SERVANT—WRONGFUL DISMISSAL. 19 Pat L.T. 188.

—Vicarious liability—Liability of master—Independent competent contractor—Negligence of—Liability

...ous if properly unskilled persons of a little ingenuity and care. Where therefore the defendants engage competent persons for doing the work and leave the matter in their hands but the work is performed negligently and as a plaintiff's house cannot be held responsible persons whom they MT. SULTAN Bt v. 111

—Vicarious liability—Negligence of doctor—Servants at ports of call—Liability of ship-owner

A ship owner must be presumed, in the proof to the contrary, to have appointed competent care and skill as doctors at ports where he is not liable for injury, if any, caused to a deck crew by the negligence of any of such doctors. (*Guka and Mitter, J.J.*) T. & J. BROCKLEBANK, LTD. v. NOOR AHMODE. 11 E.C. 181=66 O.L.J. 441=42 C.W.N. 179=A.I.R. 1938 Cal. 104.

—Vicarious liability—Negligence of fellow—Liability of master—Doctrine of common employment

consequences of the negligence of another servant common employment, is well established as a law of United Kingdom and may very well be in this country as one based on principle of justice, equity and good conscience. In order to make that doctrine applicable, the person who is sought to be made liable for injuries caused by the negligence of his servant must show that the injured man and the man doing the injury were engaged in common undertaking. The rule of common employment cannot apply to a case where the negligence complained of relates to a period of time when the injured man was permitted to be off duty the been the

TRADE MARK.

—Vicarious liability—Negligence of Master of Ship and its chief steward—Liability of ship-owner.

Where the master of the ship whose duty was to see that everything in the ship was going on satisfactorily and the chief steward whose duty was to look after the

incapacitated from doing work for the rest of his life, the owner of the ship is liable. (*Guka and Mitter, J.J.*) T. & J. BROCKLEBANK, LTD. v. NOOR AHMODE.

66 O.L.J. 441=11 E.C. (1938) 1 Cal. 216=

178 I.C. 719=11 E.C. 181=

42 C.W.N. 179=A.I.R. 1938 Cal. 104.

legal can be

at, the b the Nor

can damages be recovered for personal worry. Every lings to establish but this is not (*Monroe, J.*) O.P.L.R. 158=A.I.R. 1938 Lah. 334.

—Wrongful attachment—Suit for damages—Proof of malice and absence of reasonable and probable cause, if necessary—Damages for loss arising independent of the wrongful attachment, if can be recovered.

In order to entitle one to damages for a wrongful

TRADE MARK—Infringement—Colourable imitation—Facts to be considered.

It is a question of fact in every case whether the defendant's mark is or is not a colourable imitation of the plaintiff's mark. The surrounding circumstances of each case will have to be considered. It is not only necessary to look at the difference or at the resemblance between two given marks, but it is necessary to compare the two marks as a whole and then come to a decision. (*Mehra, J.*) HIRANAND v. SARDAR MEHARSINGH. 173 I.C. 930=10 E.C. 234=A.I.R. 1938 Sind 38.

Held, that

laskars, on the

TRADE MARK.

Fraud is to be presumed where the similarity is close and remains unexplained. An intention to deceive may be inferred from the circumstances of the case, though

TRADE MARK.

desire by resorting to those expressions. The characteristic feature of the goods of the two firms was the pictorial label.

Held that there was no colourable imitation and no misrepresentation of the plaintiffs' trade mark of the defendants and persons confusingly misled to the fact that only a few could not be by long user or the minds of the misled to them, plaintiffs themselves of their device traders, no relief could be granted to them. (Principles relating to law of Trade-marks enunciated.) (*Din Mohammad, J.*)
VERA MALL.

A.I.R. 1938 Sind 30.

—Infringement—Right to sue in respect of—Facts relating to

A.I.R. 1938 Lab. 803.

—Action for—Proof required. Fringing of trade mark, the Court own judgment from the impression from looking at the two products in passing off action, proof of actual deception. It is quite sufficient if the plain probability of deception. (*Braund, CARBON CO. v. SEI SIN & CO.*)

190 I.O. 301 = 11 B.B. 71 = A.I.R. 1938 Rang 99.

—Passing off—Expiry of patent—Rival manufacturer manufacturing goods similar in appearance as patented goods and adopting to them descriptive name by which patented goods had been known—Manufacturer—If guilty.

It is difficult where a name is descriptive of patented a manufacturer could be held he manufactured the goods in expired patents, and the only rival goods lay in the appearance

175 I.C. 830 = 10 H.S. 231 = A.I.R. 1938 Sind 38.

—Meaning of. See PENAL CODE, S. 478.

66 O.L.J. 210.

—Passing off—Action for—Colourable imitation—Test—Right to relief.

The plaintiffs who were manufacturers of black mill had on their

"H R". The last line of the device gave the length of the piece as 24 yards and towards the right there was a seal of the firm. The defendants also started manufacturing black mills with a device closely resembling that of the plaintiffs; that device also consisted of the name of the firm in English followed by a pictorial label

manufacturer rather than descriptive of the goods, with the result that other manufacturers of the goods could be compelled to adopt some means of effectively distinguishing their goods from those of the particular manufacturer. But difficult as such a case is to prove in the case of a descriptive word, it must be additionally of goods
Lord Russell
WHEAT

175 I.C. 178 = 10 R.P.C. 281 =

A.I.R. 1938 P.C. 143 (P.C.).

—Passing off—Action for—Passing off of books.

as shown on the plaintiffs' device and the numerals and the letters of the figures showing the measurements of piece were exactly the same. There was also a seal in the corner. The plaintiffs alleged that the defendants

on the similarity must be shown that with a particular as to get up, the style of printing or the work that KARAIN TRIVEDI

178 I.O. 106 =

42 C.W.N. 541 = A.I.R. 1938 Cal 594.

—Registration—Words merely descriptive of patented product—If can be registered—Descriptive words—If can acquire secondary meaning.

"Motor Chapp". It was further proved that the plaintiffs' goods were known as "Lal Pargiwala" and that the dealers and customers who were particular in purchasing the goods of one of these firms generally expressed their

TRADE MARK.

Where a name is merely descriptive of the patented product or of the character and quality of the goods in connexion with which it is used, the name, after the patent has expired, cannot be registered as a trade mark because it would be attempting by registering the name of the patented product to prolong the patent monopoly. It is however clear that such a descriptive word may possibly have acquired a secondary meaning, and have come to mean or indicate that the goods in connexion

being descriptive of the goods in connexion with which it is used, it is in fact the name of the product of which those goods are composed, then a state of which makes it extremely difficult that it ever become indicative of origin so capable of registration as a trade mark. may sometimes be overcome in a case where the alleged trade mark is in fact a description of the goods, but is

they could acquire a secondary meaning. In order to ascertain whether words have acquired secondary meaning it is of primary importance to see how the manufacturer used the words, i.e., to see whether he used them as a trade name or common law trade mark for the purpose of indicating the origin of the goods, or whether were used by him merely descriptively. (*Lord Ru of Killoren*.) CANADIAN SHREDDED WHEAT LTD v. KELLOGG CO. OF CANADA, LTD.

175 I.C. 178—10 B.P.O. 21

T. P. ACT (1882), S. 3.

NATH v. ASWINI KUMAR DEY.

I.L.R. (1938) 1 Cal. 665=175 I.C. 144=
10 R.O. 754=39 Cr.L.J. 537=42 C.W.N. 1121=
68 O.L.J. 210—A.I.R. 1938 Cal. 218.

TRANSFER OF PROPERTY ACT (IV of 1882)

—Applicability of S. 62 of the Contract Act. *See* CONTRACT ACT, S. 62. A.I.R. 1938 All. 418 (F.B.).

—Commission Agent's right—If can be assigned.
A mere right to sue—

im—Right of vendor for payment of vendor's (s) AND 3.
—B. II—Attestation by Sub-Registrar—Proof required.

In—Attestation by the Sub-Registrar by evidence that the Sub-Registrar on the document in the presence of *Mitter, J.* ATUL CHANDRA CHARAN DEY SARKAR.

87 O.L.J. 31.

S 3—Attestation—Knowledge of contents—Presumption.

An attesting witness cannot be presumed, from the mere fact of attestation, to be aware of the contents of the document, much less of a mere recital of boundaries. A.I.R. 1933 Lah. 551, Rel. on. (*Bhida, J.*) CHURI

goods to pass at once as such, as though he had

S 3 and 130(1)—Contingent by—Ex-

in future—Rela-
Sr. 3 and 130 (1).
future on the part
relationship, contractual
t, cannot, on any
as a "debt", still
g" debt. Neither
and it cannot be

in its inception and is still calculated to deceive, the user

contingent." A contingency is something that may happen in future which affects a present relationship interest such as a contingent existing interest which may interest in possession. The

It is even saleable as such, "ting" debt, it intends thereby as not yet exist at all. So

the opinion and claim of the declarant As there is no statute for registering trade marks in India "a right to a trade mark is acquired by user". (*Biswas, J.*) LOKE

also S. 130 (1) in its terms points to an immediate interest of some sort passing. While it is in every way appropriate to an accruing, conditional or contingent

T. P. ACT (1882), S. 6.

debt, it cannot be reconciled with a debt which does not exist at all. (*Braund, J.*)
matter of. 171

—S. 6—Scope—If contr
 in reconcile Ss. 6 and 43 See

40 Bom.L.R. 147.

—S. 6—Spes successioneis—Release by Hindu re
 owner of his interest in favour of widow—If binding on
 him after death of widow.

Where on the death of a Hindu leaving a widow and
 a daughter, the widow succeeded as heir and the

ing on the daughter after the death of the widow.
 (*Broomfield and Macklin, J.J.*) KARUSINGA v. NAR-
 SINHA 174 I.C. 116—10 B.R. 426—

39 Bom.L.R. 1287—A.I.R. 1938 Bom. 121.

S. 6(a) of the T. P. Act has no application to such an
 arrangement. (*Zia-ul-Hasan and Yerke, J.J.*)
 CHHATARPAL SINGH v. SANT BAKHSI SINGH.

178 I.C. 958—11 B.O. 11—
 1938 O.A. 573—1938 O.W.N. 711—
 A.I.R. 1938 Oudh 190.

—S. 6 (a)—Expectancy—Future income to be

1938 M.W.N. 806—48 L.W. 258—
 A.I.R. 1938 Mad. 881.

—S. 6 (a)—Interpretation of—Municipal employees
 chance of receiving a gratuity—If can be transferred—
 Transfer if can be challenged on the insolvency of the
 transferor—Gratuity and tradesman's book debts—
 Difference.

granting of a gratuity to a Municipal employee
 is entirely in the discretion of the

that the book debts are a necessary incident of every
 business conducted on a credit basis. A mortgage of
 such debts operates as an equitable assignment, fasten-
 ing on the property when it comes into existence.
 (*Roberts, C.J. and Spurge, J.*) SOLOMON v. THE
 OFFICIAL ASSIGNEE. 1938 Bang.L.R. 542.

T. P. ACT (1882), S. 6.

—S. 6 (a)—Relinquishment of interest in property

His son is, therefore, not estopped from claiming the

—S. 6 (d)—Applicability—Mortgage of right to
 receive maintenance under trust deed—Validity.

Where an owner in full right of certain property
 grants it to a trustee upon trust among other things, to
 pay him an allowance per month for his maintenance,

1938 O.L.

10 R.P. 235—4 B.B. 415—67 O.L.J. 241—
 33 S.L.R. 448—40 Bom.L.R. 767—1938 A.L.J. 292—
 A.I.R. 1938 P.C. 123—(1938) 1 M.L.J. 597 (P.C.).

has been given to a Hindu widow in lieu of maintenance,
 the transfer of the property during her life is not a trans-
 fer of her rights to maintenance and is valid. Ss. 6
 (d) and (dd) have no application to such a case. A.I.R.
 1932 All. 662. Foll. (*Panchridge, J.*) KAMAL CH.
 CHUNDER v. SUSHILABALA DASSEE.

42 O.W.N. 1258—A.I.R. 1938 Cal 405.

sue—Bond
 Wards Act
 arduan and
 major—Vali-
 ntainability.

1938 M.W.N. 379.

Where a vendee
 of the consid-
 eration is a creditor of the vendor, the relation between
 the vendor and vendee is that of a debtor and creditor
 and the money left in the hands of the vendee is a debt
 which could be transferred. The right to recover this is
 an actionable claim as defined in S. 3, T. P. Act
 (*Ismael, J.*) AGRENATH MISIR v. RAM RAT
 PANDEY. 177 I.C. 700—1938 A.I.R.

1291

P. ACT (1882), S. 8.

T. P. ACT (1882), S. 43.

of the Act, which would apply to Hindas (after the amendment of the Act in 1929), would give rise to the presumption that the deed confers on the donee the whole of the estate which the donor is capable of transferring. Even in the case of a deed of gift executed before 1929, *i.e.*, before the amendment of the Act, there being no "rule of Hindu Law" requiring a transfer in favour of a woman to be treated as a limited transfer, or qualified transfer, the transfer by way of gift must be treated as conferring upon the donee the whole of the interest which the transferor is capable of passing at the date of the deed and hence the donee would take an absolute estate and not merely a qualified or limited estate. (*Varsoodew and Thakor, J.J.*) HILALING v. UDESING.

173 I.C. 963 = 10 B.B. 406 =
39 Bom L.R. 1217 = A.I.R. 1938 Bom. 125.

pertues which were gifted by him previously to the widow. The defendants 2 and 3 purchased the properties after making due inquiries by examining the record-of-rights, and they had no reason to suspect that anybody but defendant No. 1 was the real owner and they acted in good faith. The plaintiff who got the will soon after the death of the widow did nothing at or after the revenue inquiry which was conducted after the issue of general notices; he also sat silent after the sale deeds were executed by the 1st defendant and gave no notice to either of the defendants 2 and 3 or even to the 1st defendant. It was not shown or even alleged that the 1st defendant himself was aware of the will. Nearly four years after the death of the widow and two years after the sale-deeds plaintiff sued for possession of the lands devised to him by the widow under her will.

pre-settlement debts and certain other loans. An heir of

39 Bom.L.R. 1217 = A.I.R. 1938 Bom. 125.

footing that the later mortgages were valid, as by express agreement, the original hypothecation bonds and the invalid mortgages were to be cumulative and independent securities. Still less can it arise after the mortgages had been set aside. (*Sir George Rankin.*)

knowledge of his title to the property at the time of giving his consent. (*Coldstream and Din Mohammad, J.J.*) SHORI LAL v. DAMODAR DAS
175 I.C. 832 = 11 B.L. 77 = 40 P.L.R. 286 =
18 Lah. 783 = A.I.R. 1938 Lah. 86.

not therefore
the properties
were bona fide
ly recover the
1st defendant.
SING v. UDE-
10 B.B. 406 =

es from

A.I.R. 1938 All. 64.

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nd com-
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S. 43—Applicability—Court-sale.
The equitable principle governing S. 43 of the T. P. Act does not apply to a Court-sale. (*Dalip Singh, J.*)

T. P. ACT (1882), S. 43.

T. P. ACT (1882), S. 52.

also share of another co sharer to be pre-empted by mortgagor—Subsequent pre-emption of such share—Rights of mortgagor—Such share—If mortgaged—Creation of charge.

S. 43 of the T. P. Act cannot apply to a case where the transferee is aware of all the circumstances and the state of the transferor's title, where it could not be said that the transferor fraudulently or erroneously represented to the transferee that the belonged to him and that he was a sharer. The mortgagor in a hypothecal him included not only his own mahal in a village, but also the share of another co sharer who has executed a sale deed in favour of a stranger which gave rise to a right exercisable by the mortgagor. The

of the land by another person, when the payment relates to the period when a suit was pending between the vendor and the vendee for the cancellation of the sale-deed on the ground that it was a benami transaction. (*S. K. Ghose and Patterson, J.J.*) SATTU LALL JAHAR MULL v. KRITANTA KUMAR GUHA.

67 O L J. 527 = 42 C.W.N. 378.

—S. 51—Applicability—Landlord and tenant—

1938 P.W.N. 386.

—S. 51—Applicability—Case of temple land for

1938 M.W.N. 1236.

of transferee—Inference from

in respect of the debt on presumption, but that it created a charge on that share, and that share therefore became a security for the money borrowed by the mortgagor under the hypothecation deed. (*and Alltop, J.J.*) KABUL CHAND v. BAI

I.L.B. (1938) All 63 = 173 IO 130 = 1

1938 A.L.B. 87 = 1937 A.L.B. 10

1937 A.L.J. 1240 = A.L.B. 10

—S. 43—Applicability—Transfer of estate as full owner by person having only spes successionis—Subsequent acquisition by transferor of full rights—Such rights—If pass—S. 6—Effect of.

Where in the case of a sale an erroneous representation is made by the transferor that he is the full owner

The question whether or not a transferee believed in good faith that he was absolutely entitled to the pro-

1938 O.W.N. 281.

—S. 51—Principle underlying—Applicability—Circumstances.

The principles underlying S. 51 of the T. P. Act have been extended in suitable cases on equitable grounds. Where the defendants being relations of the plaintiff

transferee knows that the (Barlee and Macklin, J)

X.L.B. (11)

10 : 1

A.L.B. 1938 Bom. 228.

—S. 48—Applicability—Substituted security—

1938 A.W.R. (H.C.) 1000 = A.L.B. 1938 All 342

for leave to

lands dis-

According to doctrine of *lis pendens*, any dealings with the property in suit by a party thereto cannot

—S. 50—Tenant paying rent to landlord after notice of sale by landlord—Payment relating to period when suit was pending for cancellation of sale deed—Tenant, if protected.

The terms of S. 50 of the T. P. Act raise a question of good faith on the part of the payer twice, first with regard to the payment actually made and, secondly

Madras Marumakkathayam Act, S. 43 if fall under S. 52—Suit for partition filed after application for registration of tarwad as impartible—If affected—Subsequent registration of tarwad—Effect on suit. See MADRAS MARUMAKKATHAYAM ACT, S. 43.

1938 M.W.N. 1243.

—S. 52—Applicability—Leases for purposes of cultivation.

T. P. ACT (1882), S. 52.

It is wrong to think that leases for purposes of cultivation during the pendency of partition proceedings are bad under S. 52 of the T. P. Act. (*Bamford, J.M.*) *RAM GHULAM v. THE COLLECTOR OF BANDA.* 1938 A.L.J. (Supp.) 20=1938 A.W.R. (B.E.) 144=1938 E.D. 285.

S. 52—Applicability—Mortgage in favour of widow creating charge on properties—Transfer of properties by mortgagee affected by his pendency—Agreement of mortgagee to release property from charge on part consideration therefor—Effect—Maintenance.

Where a person such as a Hindu is made a decree for maintenance, the mortgagee is entitled to proceed against the properties or some of them into other hands from the persons they were at the time of the transfer of the properties with the charge subsisting thereon is affected by his pendency. The fact that the widow holding the decree transfers to release the properties in the charge for consideration does not vitiate the decree from operating, unless there is a release by her valid in law, the properties remain charged. The fact that part of the release agreed on has been not entitle the transferee to a release on part performance has no application to such a case, so as to override the rule of his pendency. (*Leach, C. J., Varadachariar and Mookti, J.J.*) *RAMACHANDRA NAIDU v. VENGAMMA NAIDU.*

10 E.M.

S. 52—

If limited

Obiter, the words "any other party thereto" in S. 52, Transfer of Property meaning only any opposing interest. The and *Manohar Lal*, *NANDI CHOUDHURY* 19 Pat.L.T. 35.=A.I.R. 1938 Pat. 487.

S. 52—His pendency—Applicability—Pendency of suit in a Court not having jurisdiction. The doctrine of his pendency cannot apply where the suit concerned was pending in a Court which had no jurisdiction to entertain it at all. (*Broomfield and Macklin, J.J.*) *KARUSINGA v. NARSINHA.* 174 I.C. 116=10 E.B. 426=39 Bom.L.R. 1287=A.I.R. 1938 Bom. 121.

T. P. ACT (1882), S. 53

S. 52—Sust by A for declaration of title to property against C—Mortgage taken from C pending suit—If affected by his pendency.

A brought a suit against B to recover lease money of certain property. B pleaded that A had represented to him that C had half share in such property and that on money to C. B there denying his by his mortgage from C property and C for declaration B was

also made a party.

B was aware of the fact that was in dispute he took the mortgage was therefore affected and A could not be held (*Bhidi J.*) *THAKUR DAS*

40 P.L.R. 768=

A.I.R. 1938 Lah. 448.

Execution Sale session by transferee plaintiff for possession and colourable and sham transaction—Maintainability.

There is no rule of law that a transferee who has purchased and who is sought to be set aside on the ground of colourable transfer is limited to the remedy of S. 53, T. P. Act. Where the plaintiff is opposed in taking delivery by the transferee from the judgment debtor on the ground that he is in possession and the plaintiff is alleging collusion, it is not necessary to set aside the transfer after by the transferee was a

colourable and sham transaction. (*Ramchand and Ram Asray*) P.W.N. 738. movable property—Transfer, if

The principle contained in S. 53, T.P. Act, applies to transfers of movable property also. A transfer is wholly void if part of the consideration was non-existent and the object of it was to defraud the creditors. (*Pollock, J.*) *MOTILAL v. KASHIBAI.* 174 I.C. 398=10 E.N. 384=A.I.R. 1938 Nag. 249.

S. 53—Frame of suit—Objection as to—If can be raised in appeal. See PRACTICE—APPEAL—NEW PLEA. 1937 O.W.N. 1069.

S. 53—Fraudulent intention—Inference from

as well as the are all relevant to decide what his Where at the creditors the reditors and great loss to creditors who

execution of the decree in the mortgage to *Mohammad Noor and S. C. Chatterjee*) *LAL MARWARI v. THAKUR PRASAD MARWARI* 1938 P.W.N. 836=19 P.L.T. 781.

A.I.R. 1938 Lah. 136

T. P. ACT (1882), S. 53.

T. P. ACT (1882), S. 53

—S. 53—*Fraudulent transfer—Inference, circumstances.*

It is not correct perhaps to say that there is distinction between consideration which should be

benefit to
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to whom a
vastava, C.
B. JAHAN
IO 887=
N. 1176=
Oudh 44.
103—Test
of intent

as annual rent which was not to be to his creditors in discharge of by the lessor. These creditors be decree, in other words, there was sure being put upon the judgment creditors. Besides this there was that the judgment-debtor had given lessee and moreover there was no proof whether the annual rent which was to be paid to the creditors had actually been so paid.

Held, that in these circumstances the transfer was with intent to defeat and delay the creditors and it was not a case of preferring or favouring one creditor at the expense of another. The transfer was therefore void as against—

(*Dalip SHAH.*)

that debts are due from transferor—If sufficient.

The mere fact that debts are due from transferor is not alone sufficient to establish a fraudulent intention; on the other hand it must be proved that at the time of the transfer, motive for the transaction was to defeat or delay the creditors. There can be no direct evidence of the existence of the intention. This can be inferred proved in the case. (*Jai Lal, J.*)

KISHAN CHAND ISHAR DAS. A.I.R. 1938 Lah. 136.

—S. 53—*Fraudulent transfer by insolvent in favour of his wife more than two years before, judgment—B purchasing property in execution mortgage decree against her—Application by Receiver to avoid transfer—Transfer in favour could be set aside.*

A Mahomedan transferred certain properties

made by the Receiver, the transfer in his favour must stand. (*Bhida, J.*) BASHARAT ALI SHAH v. RAM RATTAN (OFFICIAL RECEIVER).

does not make the transfer a fraudulent one. A debtor for all that is contained in S. 53, T. P. Act, may pay his debts in any order he pleases, and prefer any credi-

Y. D. 1938—82

177 I.C. 611—11 R. 60—
1938 O.W.N. 922—1938 O.A. 719—
1938 O.L.R. 433—A.I.R. 1938 Oudh 230.

—S. 53—*Intent to defeat—Motive—Relevance.*

In looking at a transaction for purposes of S. 53 of the T. P. Act, one must look to the intention of the transfer and not to the motive. Where the motive of regard the maintenance of the creditors, the transfer is to pay creditors. (*Panchridge,*

J.) CHANDMULL v. SATYA CHURN. 42 O.W.N. 34.

—S. 53—*Issue under—If can be raised by way of defence.*

Where at the time of a sale of the judgment debtor's property in execution of a decree an objection to the sale

claim on the ground that the property was transferred fraudulently and he need not file a separate suit to have

S. A.I.R. 1938 Lah. 136.

—S. 53—*Assignment of property by judgment debtor to Receiver.*

Where a person who was borrowing money and squandering it by his extravagance and immoral habits was

of relinquishment of in favour of his minor property from the creditor be said to have been defrauding any creditors. (*SUNDAR LAL v. GUR-*

SARAN LAL. 10 R.O. 187—172 I.C. 637—
1938 O.A. 34—1938 O.L.R. 11—
1938 O.W.N. 101—A.I.R. 1938 Oudh

T. P. ACT (1882), S. 53

S. 53:

debtor as

Receiver, if

In a suit

debtor as be

passed from

where the de-

vent, is a necessary party and such a suit or appeal is incompetent when the receiver, who is a necessary party is not impleaded. (*Bhade, J.*) **DIN MOHAMMAD v. MT. WALAJI BEGUN.** A.I.R. 1938 Lah. 856.

—S. 53—Suit under—If can be stayed under S. 7 of U. P. Encumbered Estates Act. See U. P. ENCUMBERED ESTATES ACT, S. 7. 1938 O.A. 548.

—S. 53—Transfer—Mere preference of particular creditor.

Mere preference of one creditor to another is not a transfer within the meaning of S. 53. There is a distinction between transfers in bankruptcy which are bad, because they do in fact prefer one creditor to another, and between transfers which fall under the provisions of S. 53, which are bad because they are sham transactions intended to benefit the debtor and defeat or delay the creditors generally. (*Davis, J.C. and Mehta, J.*) **PARMANAND JHANGALDAS v. JAIRAMDAS SADIHURAM.** 178 I.C. 469 = A.I.R. 1938 Sind 215.

—S. 53—Transfer—Relinquishment of rights by co-partner.

The relinquishment of his rights by a coparcener in

another—Validity.

the mortgagee to be paid to the debtor's prior mortgage. The debtor did not retain any benefit to himself.

Held, that the transfer was in principle only a transfer which paid off previous creditor to the disadvantage of another creditor and therefore was not affected by S. 53, Transfer of Property Act.

Held further, that the circumstance that the debtor's action was prompted by revenge against the creditor who got him imprisoned was irrelevant. (*Dalip Singh and Slem, J.J.*) **MILA v. MANGAL RAM.** A.I.R. 1938 Lah. 156.

—S. 53—Transfer—What may amount to—Acquiescence in mutation.

Where two debtors allowed the wife of one of them to

mutation by stating that they had no objection.

Held, that such an act came within the description of an act by which a living person conveys property and thus being a transfer was voidable under S. 53. (*Thomas, C.J. and Yorks, J.*) **ASKARI BEGAM v. BALLABH DAS.** 175 I.C. 708 =

T. P. ACT (1882), S. 53-A.

316 =

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e deed

must be considered as a whole. The deed is valid if it is substantially for the benefit of the creditors and not simply a device for retaining a benefit for the author of the trust at their expense. A trust, the main object of which is the payment of the debts of the author of the trust, is substantially for the benefit of the creditors, and it is not hit by S. 53 of the T. P. Act, although there is a provision for the maintenance of the family of the author of the trust which is not inconsistent with the tenor and object of the trust. (*Nasim Ali and Henderson, J.J.*) **HIMANSU KUMAR v. HASEM ALI KHAN.** 42 O.W.N. 1131 = A.I.R. 1938 Cal. 818.

—S. 53 (1)—Frame of suit—Suit under O. 21, R. 63, C. P. Code—If to be of a representative character. See C. P. CODE, O. 21, R. 63 AND T. P. ACT, S. 53. 1937 O.W.N. 1169.

—S. 53 (1), Para. 2—Applicability—Conditions. S. 53 does not apply to cases simply where one creditor is preferred to another, and the provisions of Para. 2 of sub-s. (1) of S. 53 do not come into operation until the provisions of Para. 1 of that sub-section have been fulfilled. (*Davis, J.C. and Mehta, J.*) **PARMANAND JHANGALDAS v. JAIRAMDAS SADIHURAM.** 178 I.C. 469 = A.I.R. 1938 Sind 215.

IN 1928, S. 53 (1), last para—O. 21, R. 63, C. P. Code—Suit by or to establish right to attach and auction of decree—Form of—If to See C. P. CODE, O. 21, R. 63. 40 Bom L.R. 371.

to transfer

contract to been completed of the B. T. Act which in by S. 53-A against his that section. L CHANDRA 42 O.W.N. 630.

POLLEY v. KALIPADA GHOSAL.

—S. 53 A—Applicability—Mortgage—Mortgagor reserving to himself right to sell sub soil rights—Subsequent unregistered lease by mortgagor—Lease in possession—Action on mortgage by assignee of mortgage—Claim by lessee for specific performance—Sustainability. In a mortgage deed the mortgagor reserved to himself the right to manage sub soil rights of the mortgaged property. Subsequently, the mortgagor by an unregistered document contracted to lease the sub soil rights to another person. The lessee was in possession of the soil under the unregistered document. In an action on the mortgage by the assignee of the mortgagee the lessee contended that the action could not affect his lease.

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DI NATH. 17 Pat 460 = 176 I.C. 273 =

19 Pat. L.T. 594 = 4 B.R. 637 = 11 R.P. 59 =

A.I.R. 1938 Pat. 337.

—S. 53 A—Applicability—Necessity for written agreement.

T. P. ACT (1882), S. 53-A.

A contract or an agreement in writing or a written agreement is a *sine qua non* under S. 53 A. Such written agreement may of course be the embodiment of what has already been orally agreed upon and may also refer to payment by the purchaser and receipt by the vendor of part of the purchase-money, but it must essentially be a written agreement. Unless a document can be held to be an agreement or contract of sale, it will not, by the mere fact that from it the terms necessary to constitute the transfer can be ascertained with reasonable certainty, be sufficient to satisfy the requirements of S. 53 A as what the section requires is not a

174 I.C. 169=10 B.R. 386=
A.I.R. 1938 Rang. 49.

—S. 53-A—Notice—Facts from which it could be

wrote over collections in the neighbouring lands resulting

after his lease, the question arose whether C had notice.

Held, that C had notice. S. 53 A ope

—(as amended), S. 53-A—Retrospective effect—
Suit after 1st of April 1930 in respect of transaction
prior to that date—If affected—Act XX of 1929, S. 63

the defendant to avail
red by the section,
was much earlier in po
1929 prevents only
amended Act from b
the rest which includes S. 16 (which introduced S. 53 A)

T. P. ACT (1882), S. 54.

missible under the law previous to the introduction of S. 53-A. As this compromise is itself not admissible the rent receipts in which the amount of the original rent is stated would also be not admissible to show reduction of rent. (Jack, J.) MOHENDRA NARAYAN ROY v. PROFULLA KUMAR. 43 C.W.N. 34=

A.I.R. 1938 Cal. 795.

—S. 53 A—Right of defence under—Limitation—
Limitation Act, Art. 114.

S. 53 A of the T. P. Act confers only a passive right and is available to a defendant to protect his possession. Art. 113 of the Limitation Act certainly cannot the right of to a defendant performance of the red by limitation, KOKUL CHANDRA

POLLEY v. KALIPADA CHOSE 42 C.W.N. 630.

—S. 53-A—Scope—Retrospective operation.

S. 53-A, of the T. P. Act should be regarded as re-

Act, is not retrospective, (Wort and Manohar Lall, J.J.)
JAGDAMBA PRASAD v. ANADI NATHI.

17 Pat. 460=176 I.C. 278=4 B.R. 697=

11 R.P. 59=19 Pat L.T. 694=

A.I.R. 1938 Pat. 337.

—S. 53-A—Scope of—Contract to be in writing
and not writing referring to prior oral contract.

tion into writing of a
provisions of S. 53-A and a writing in which there is a
mere reference to a previous oral agreement. (Roberts
C. J. and Dunkley, J.) MAUNG OHN v. MAUNG PO
177 I.C. 977=A.I.R. 1938 Rang. 356.

amended), S. 53 A—Scope of—Extent of
conferred.

of the T. P. Act is restricted in its application

rights. (Bose, J.) HINDUSINGH v. KHETSINGH.

T. P. ACT (1882), S. 54.

—No permission—Registration on date when Collector ceased to function—If can validate.

In case of a sale, as in the case of gift, the date on which the transfer takes effect is the date of the instrument and not the date of the registration of the instrument. Where, therefore, a sale is effected of property which is under the Collector's management under Sch. 3, C. P. Code, without the written permission of the Collector, such a sale is a nullity and the fact that the property has ceased to be under the management of the Collector on the date on which registered will not render the sale cannot be turned into an effect—Registration of an ineffective transfer—Collector has ceased to function—*Puranik, J.* GANESHPRASAD 175 I.O. 384—10 R.N. 447—

—S. 54—“Tangible immovable property”—“Delivery of possession”—Property subject to usufructuary mortgage—Sale for less than Rs. 100—Sale deed not registered—Validity—Vendee directed to discharge mortgage and to enjoy property—Vendee paying off mortgage and getting possession—Sufficiency.

A sale by a mortgagor of his interest in immovable property of which he has made a usufructuary mortgage is a sale of “tangible immovable property” and can be effected, where the value of the property is less than Rs. 100, by an unregistered sale deed and delivery of possession. Where it is provided in the contract of sale that the vendee is to pay off the mortgage and enjoy the property, if the vendee does in fact pay off the mortgage and gets possession, it must be held that he gets possession with the assent of the vendor, and that amounts to delivery of possession within the meaning of S. 54, Transfer Property Act. (*Broomfield and Macklin, J.J.*) TUKARAM v. ATMARAM. 40 Bom L.R. 1192.

—S. III (1)(g) and Sub-S. (2)—Applicability of principle underlying—Covenant for freedom from incumbrances—Who could avail and pursue remedy—Measure of damages.

A mortgaged to R and subsequently to P by way of second mortgage, P assigned to G. Later on, R sued A without impleading P or G and obtained a foreclosure decree and then sold to X as a property free from incumbrances. X mortgaged it to Y also a second estate. Subsequently G sued on his mortgage and obtained a decree. The question was the mortgagee of X was entitled to pursue which X had against his vendor R on the covenant for freedom from incumbrances.

Held, that the question was to be decided according to the principle of S. 55 of the T. P. Act because what

that he had power to transfer and that the property was free from incumbrances. The burden was on Y, the mortgagee from

sued R's representative, the liability would be greater. II

T. P. ACT (1882), S. 55.

the value of the subject-matter was less than the debt, the damage would be the value of the subject-matter. (*Stone, C. J. and Puranik, J.*) RINSA ANSA v. MOHANLAL MADANGOPAL.

A.I.R. 1938 Nag. 257.

—S 55 (1) (g)—Vendee's right to indemnity—Vendee not properly defending mortgage suit and paying large sum to mortgagee.

Where the vendors of certain immovable property undertake to indemnify their vendees, if they suffer any

vendors, where it is found the vendees were negligent in their defence of the mortgage suit and did not raise proper pleas available to them and that there was really no cloud on the title of their vendors and with a little diligence exercised on the part of the vendees the cloud that was sought to be cast on the title of the vendors could have been cleared and the vendees unnecessarily paid an exorbitant sum to the mortgagees, without even consulting the vendors. (*Addison and Din Mahomed, J.J.*) LOOKMANJI ADAMJI v. MANGAL SAHN.

A.I.R. 1938 Lah. 743.

—S. 55 (4) (b)—Vendor's lien—Enforceability by representative of vendor—Sale of property with direction to vendee to discharge decree debt of vendor—Consideration reserved with vendee—Vendee failing to discharge—Execution sale of property by decree-holder—Purchaser in execution—Right of to sue for unpaid purchase money from vendee—Right to interest.

Where under a sale-deed the bulk of the consideration is retained with the vendee for being paid to certain holders of decrees against the vendor at the request of the vendee, it cannot be said that the statutory charge in respect of the vendor's lien for unpaid purchase money is given up. The mere fact that the vendor asks the vendee sometime after the sale-deed not to pay the amount due to one of the creditors

the decrees, who is not paid by the vendee brings the property to sale in execution of the decree against the vendor, it is the charge for unpaid purchase-money which the vendor had in the property after the private

of the property to a subsequent purchaser is entitled to a charge, as the charge, as the same has passed from him to the execution sale. The purchase-money charge is not extinguished. (*Pandurang, J.*) SHMAYYA

W. 527—M.L.J. 1938—A.I.R. 1938 Mad. 457—(1938) 1 M.L.J. 316.

(6)—Holder of charge under—Rights of Insolvency—Sale of assets including charge by Official Receiver—Purchaser of all assets paying sale price but not getting formal sale deed

T. P. ACT (1882), S. 55.

—Rights of—Suit on mortgage impleading original mortgagor only—Non-jander of Official Receiver—Effect—Sub-mortgage—Right to sue original mortgagor—T. P. Act, S. 134—"Transferee."

A person who purchases the assets including a mortgage right, belonging to an insolvent at a sale by the Official Receiver, but who does not get a formal registered deed of sale in his favour from the Official Receiver is not entitled to maintain a suit on the mortgage as against the original mortgagor merely on the strength of his purchase and payment of the sale price. Though he would get a charge or lien in his favour under S. 55 (6) of the T. P. Act for the amount paid by him to the Official Receiver, the charge would attach to all the items purchased by him and as charge holder he would not be entitled to throw the whole burden on one of the items covered by the charge. Though he gets the rights of a sub-mortgagee by reason of S. 55 (6), T. P. Act, and though as sub-mortgagee he can sue the original mortgagor, if the Official Receiver who represents the original mortgagee is not impleaded as a party to the suit, that is a defect fatal to the suit, because the plaintiff cannot ask the Court to settle the amount due on foot of the sub-mortgage in the absence of the sub-mortgagor. Nor can the plaintiff holding a charge under S. 55 (6) be placed on the same footing as a

T. P. ACT (1882), S. 58

mortgage, the transaction does not amount to a mortgage within the definition of S. 58. (*Lori Williams J.*) GAJANAND AGARWALLA v. RANI PRAVAG KUMARI DEBI. 176 I.C. 913=11 R.O. 188=

A.I.R. 1938 Cal. 48.

—S. 58 (c) and (g)—Applicability—*Lahan gahan* mortgage—Nature of—Right to decree for sale, *See PRACTICE—APPEAL* 20 N.L.J. 285.

—S. 58 (c)—Construction of deed—Mortgage or sale.

The distinction between a sale-deed with a condition of re purchase and a mortgage by conditional sale is one of intention to be gathered from the deed itself and the extrinsic evidence of surrounding circumstances. The fact that there was no bargaining as to the amount of consideration and the price was inadequate is more in favour of the deed being a mortgage and not a sale than *vice versa*. Where a deed which purported to be a deed of sale contained a clause to the following effect: "If I (the executant) pay the sale price to the vendees within a period of 8 years the vendees shall without any excuse return the property sold and after 8 years I shall have no right left for the return of the property."

Held, that the deed was a mortgage by conditional sale (*Srivastava, C. J. and Hamilton, J.*) FAZAL AHMAD v. AFAQUL RAHMAN.

vendee is entitled to recover not only that part of the

anomalous. (*Dalsip Singh and Shrimp J.J.*) MT.

C. J. and Dunkley, J.) U THA NYO v. M. M. R. M. CHETTYAR FIRM. A.I.R. 1938 Rang. 367.

—Ss. 58 and 100—Agreement to mortgage—If creates mortgage or charge—Rights of parties—Decree for specific performance—If relates back to date of agreement.

that a decree for specific performance is properly made in a suit between the parties, it cannot relate back to the

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cope—
way of
interest—Right of landlord to recover rent from mortgage—Priority of contract—Liability of mortgagee—Covenant by mortgagor and actual payment of rent by him for certain period—If absolves mortgagee.

S. 58, T. P. Act, does not purport to enumerate a complete catalogue of permissible mortgages. Nor does

transfer shall not the terms of an mortgaging his the whole of his (certainly when rent reserved by and by the amendment took no steps to

amend S. III (c) of the Act; nor did it repeal S. 58 (e). The Act therefore continues to contemplate an absolute

177 I.O. 467=11 R.B. 85= 40 Bom.L.B. 545=A.I.R. 1938 Bom. 357.

—S. 58—Mortgagee aware of disputed and doubtful title of mortgagor—Transaction, if mortgage.

Where the mortgagee knows already that the mortgagor is not in possession of the mortgaged properties and that he has only a doubtful and disputed title to them, and when in spite of such knowledge he takes a

there is privity of contract between the mortgagee and the landlord, and the mortgagee becomes liable to pay the rent to the landlord. Whether or not the mortgagor covenanted to pay rent to the landlord and whether or not for a period of time he actually paid the rent is immaterial.

Quære.—Whether the English conception of p of estate exists or not in Indian Law. (*Chaitan*

T. P. ACT (1882), S. 58.

rdl. C. J. and East All. J.) SHIVA PRASAD SINGH
v. TOM SMITH. 17 Pat. 499 = 1933 P.W.N. 805.

—S. 58 (f)—Creation of equitable mortgage—All
title deeds—If to be deposited.

A deposit of some of the title deeds relating to a

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should be deposited, and are material evidences of title and are proved to have been deposited with the intention of creating a mortgage. (*Madhavan Nair and Stodart, J.J.*) RAMANATHAN CHETTIAR v. SHRI DOWLAT SINGJEE THAKORE SAHIB. 1938 M.W.N. 785 = 48 L.W. 202 =

A.I.R. 1938 Mad. 865 = (1938) 2 M.L.J. 534.

—Ss. 58 (f) and 59—Deposit of title deeds and advance of money already complete—Subsequent execution of memorandum reciting deposit—Registration—

transaction. The writing is therefore only a memorandum or record of a complete transaction, and does not require registration. Its non-registration does not make the equitable mortgage invalid, as the document does not constitute the bargain between the parties. (*Madhavan Nair and Stodart, J.J.*) RAMANATHAN CHETTIAR v. SHRI DOWLAT SINGJEE THAKORE SAHIB.

1938 M.W.N. 785 = 48 L.W. 202 =
A.I.R. 1938 Mad. 865 = (1938) 2 M.L.J. 534.

In deciding whether the writing is such a memorandum of a completed transaction or the embodiment of the actual contract, the use of the past or present tense in reference to the deposit may be an indication of the intention of the parties, but cannot of itself be the sole criterion.

ment. A document describing the lenders and the name, father's name, religion, occupation and address of the borrower and continued as follows. "On this date I have executed a promissory note in your favour and received Rs. 1,900. I have deposited with you as security the title deeds of premises when I pay back this effect is the as followed

T. P. ACT (1882), S. 66.

terms of the loan were agreed on and the money drawn by the lenders from a fund some days before the title deeds were handed over.

Held, that the document was not a complete record of the contract, that there was a completed mortgage to the writing of the

admissible in evidence, *(Krishna Chetty v. 235 = 48 L.W. 119 = I.B. 1938 Mad. 547. mortgage of equitable*

mortgage—Validity.

An equitable sub-mortgage of an equitable mortgage can be validly made. There is nothing in S. 68 (f), T. P. Act, against the validity of an equitable sub mortgage of a mortgage created by deposit of title deeds. (*Madhavan Nair Chetty v. SAHIB.*

A.I.R.

tion of creating a security thereon. (*Roberts, C.J., Mysa Bu and Dunkley, J.J.*) CHIDAMBARAM CHETTIAR v. AZIZ MEAH. 175 I.C. 208 =

1938 Rang.I.R. 316 = 10 E.B. 472 =
A.I.R. 1938 Rang. 149 (F.B.).

—S. 61—Several mortgages—Provision in later that money thereunder should be paid at time of redemption of earlier one—Right to redeem later mortgage alone.

—S. 66—Applicability and scope—Mortgage—simple—Mortgagor in possession—Lease created by—Validity—Burden of proof—Rules of English Law—Applicability of.

The rules of English law as to the relative positions of created by be appointed mortgage which the mortgagor or mortgagee, a mortgagor creating a simple mortgage under the Transfer of Property Act does not part with possession, and the right of the mortgagee is only to cause the mortgaged property to be sold for the payment of his debt. Where leases executed by the mortgagor are questioned by the mortgagee, the burden is not on the lessees to prove that the leases were usual and given in the ordinary course of management, especially where the mortgagee's dues are satisfied by sale granted by the ad under S. 66 of ly generally to all acts which either possession, and

T. P. ACT (1882), S. 67

if by such act in his part the security is rendered insufficient. The contention that S. 66 is never intended to apply to a lease granted by a mortgagor in "unsound." (*Manohar Lall and Chatterji, J.*)

RAY PRASAD CHOUDHARY v. C. G. ATKIN

175 I.C. 279—4 B.B. 565—10

1938 P.W.N. 177—III Pat L.T. 95—

A.I.B. 1938 Pat. 189.

—(as amended in 1929). S. 67—Anomalous mortgage—Remedy by way of sale. See C. P. CODE, O. 34, R. 4 (3). 20 N.L.J. 285.

—Ss. 67 and 68—Mortgage of mixed character—Mortgagor's failure to give possession—Rights of mortgagee.

Where a mortgage is of a mixed character, that is, it comprises the features of simple mortgage and usufruc-

T. P. ACT (1882), S. 68.

(Adaptation of Laws) Order 1937, to deal with the property situate in British India and is not empowered to

the mortgagee are in no way injured because owing to the fact that the procedure provided does not enable him to sue in one Court in Burma for sale of all the mortgaged property, he is not to be deemed to have waived his claim against property situated in British India inasmuch as it cannot be included in the suit instituted in Burma. (*Mya Bu and Mackney, J.J.*) A.K.R. M. M. K. CHETTYAR FIRM v. VALIAPPA CHETTYAR.

A.I.B. 1938 Rang. 459.

—(as amended in 1929). S. 67 A—Scope—If re-

KANHAIYA PRASAD v. MT. HAMIDAN.

I.L.B. (1938) All. 714—176 I.C. 492—

1938 O.W.N. 642—1938 A.W.R. (H.C.) 408—

1938 A.L.J. 746—11 B.A. 110—

1938 A.L.B. 634—A.I.B. 1938 All. 418 (F.B.).

—S. 67—Prohibition of sale by usufructuary mortgage—Principle underlying

The principle underlying the statutory prohibition of sale by usufructuary mortgagee is that the mortgagee looks to the rents and profits for the satisfaction of his

Quere.—Whether the operation of the section can be

A.I.B. 1938 Bom. 196.

—S. 68—Mortgaged property not in possession of mortgagor—Suit pending in respect of it—Mortgagor aware of such circumstances—Mortgagor found not entitled to such property—Suit by mortgagee before 'ed period for mortgage money—If

that spring out of it. (*Dalip Singh and Slemp, J.J.*) MT. MOHAN DEVI v. NAWAB TALIH MEHDI KHAN.

A.I.B. 1938 Lah. 145.

executed a mortgage in respect of which he was not in possession but to which he claimed to be entitled. A suit was pending against him in respect of such properties. The mortgagee was aware of all this. It was stipulated in the

obtaining a decree in a matter of procedure. No suit has any vested right in a course of procedure and right to complain even if during the litigation the procedure is changed. The Civil Procedure Code no substantive rights. Alterations in the form

transacts be considered a wrongful act or

respect of both the properties but it makes no reference as to the Courts to which he must have recourse in exercising that right of action. He must have recourse to Courts having jurisdiction and the jurisdiction of the Court is determined by the Code of Civil Procedure. In a suit on a mortgage brought in October 1937 in respect of properties situated in Burma and in Madras Presidency in British India, executed prior on 1st April 1937, i. e. prior to separation of Burma from India, the Court in Burma has no jurisdiction by reason of Burma

176 I.C. 913—11 B.C. 188—A.I.B. 1938 Cal. 43.

—S. 68—Right to sue—Withdrawal of compensation money—Mortgagee, if can sue to enforce his security. See T. P. ACT, S. 73.

1938 A.L.J. 11 (F.B.)

—S. 68 (a)—Applicability and repayment mortgage money—Express or sue for mortgage money—Etc.—S. 68, T. P. Act, having reg

T. P. ACT (1882), S. 68.

of the words used, refers to an express contract to repay the loan in contradistinction to a contract implied by law.

A usufructuary mortgage deed after providing that the mortgagee in possession was to repay himself, so far

shall repay the entire peshgi money in cash in one lump at one time to the aforesaid zurpeshgidar, I shall take back this deed and enter into possession of the ijara property." The deed then provided that the executant (mortgagor) "shall not put forth any application directly or indirectly to redeem the rehan without making payment of the entire full amount of peshgi."

for sale. (*Wort, C. J. and Manohar Lal, J.*) **RAJ. KUMAR BHARTI v. SURAJDEO SAHL.**

177 I.C. 533=4 B.R. 834=11 B.P. 151=
19 Pat.L.T. 737=1938 P.W.N. 659=
A.I.R. 1938 Pat. 585.

—Ss. 68 (1) (a) and 67—Mortgage for a term—Express provision enabling mortgagee to recover his money on the expiry of the term fixed—Decree for recovery of money by sale, if justified

Where in a usufructuary mortgage there was among others, an express provision enabling mortgagee to recover his money on the expiry of the term fixed, mortgagee is entitled to sue for and under S. 68 (1) (a) read with S. 67, mortgagee is entitled to sue for recovery of money by sale of mortgaged property. (*Nasirullah, Ag.C.J. and Verma, J.*) **RAM KUMAR v. MAHPAL SINGH.**

I.L.R. (1938) All. 218=
174 I.C. 292=10 B.A. 566=
1938 A.W.B. 27(H.C.)=1938 E.D. 230=
1938 A.L.J. III=1938 A.L.R. 257=
A.I.R. 1938 All. 188

—S. 68 (1) (c)—Applicability—Non payment of rent by mortgagor tenant—If amounts to depriving

usufructuary mortgage of house—Repairs not done—Loss of rent—If amounts to a deprivation of part of security—Right to sue for mortgage-money.

T. P. ACT (1882), S. 76.

Under Cl. (c) of S. 68 (1) of the T. P. Act, no question of the security becoming insufficient within the meaning of S. 66 arises and the only question is whether or not the mortgagee has been deprived of the whole or part of the security by or in consequence of

and *York, J.J.*) **MATHURA DEVI v. MOHAN LAL.**
177 I.C. 100=11 B.O. 26=
1938 O.A. 615=1938 O.L.R. 375=
1938 O.W.N. 806=A.I.R. 1938 Oudh 210.
—(as amended by Act XX of 1929), S. 75—
Interpretation—Part of mortgaged property acquired under Land Acquisition Act—Mortgagor withdrawing money—Remedy of mortgagee—Non withdrawal of compensation in S. 68—

n to a mortgagee by S. 73 of the T. P. Act is over and above the right that he has under the law to realize the mortgage debt by enforcing his security against the mortgaged property or the property substituted for the mortgaged property. As the surplus proceeds or compensation awarded under the Land Acquisition Act represent the mortgaged property in a new form, the mortgagee is entitled to recover the same in enforcement of his security. The omission of the word 'charge' from Cl. (1) of S. 73 is attributable to the recognition by the Legis-

compensation
P. Act, does
for enforce-
ing his security against those proceeds or that money. (*Iqbal Ahmad, Harris and Bapat, J.J.*) **GIRDHARI LAL v. ALAY HASAN MUSANNA.**

I.L.R. (1938) All. 513=174 I.C. 702=
10 B.A. 609=1938 A.L.R. 318=
1938 A.W.B. (H.C.) 188=1938 O.W.N. 433=
1938 A.L.J. 313=A.I.R. 1938 All. 221 (F.B.).
—(as amended in 1929), S. 76 (c)—Mortgagee in possession—Duty of—"and all the rent"—Meaning and effect of.

DEO v. SHEONARAIN MARWARI.
174 I.C. 1001=4 B.R. 498=10 B.P. 560=
10 Pat.L.T. 849=A.I.R. 1938 Pat. 198.

T. P. ACT (1882), S. 76.

T. P. ACT (1882). S. 83

174 I.C. 1001=4 B.R. 498=10 R.P. 560=
19 Pat L.T. 849=A.I.R. 1938 Pat. 196.

—S. 78—Priority—Prior mortgagee not in possession of title deeds—Subsequent mortgagee lending bona fide without notice of prior mortgage—Omission to call for title deeds—If ground for postponing him and giving priority to prior mortgagee

The omission on the part of a subsequent mortgagee who lends money bona fide in ignorance of the claim of a prior mortgagee, to himself sufficient to postpone mortgagee, when the title deeds. It is only upon of the title-deeds notice can be invoked the other party to call and Varadachariar, NARASINHA RAO NA

11 F
47 L.W. 40=A.I.R. 1938 Mad. 161.

—S. 78—Applicability—Absence of advance subsequent to second mortgage—Right of prior mortgagee to priority.

Where a mortgage is executed by way of continuing security for the payments of all debts due and thereafter may be due by the mortgagor and a subsequent mortgagee takes the mortgage of the same property with knowledge of the prior mortgage and the prior mortgagee thereafter does not make any advances, the prior mortgagee is entitled to priority not only in respect of principal sum but also interest accruing on it. As there

certain amount for mortgage of 27 1/2 lakhs and the first mortgage that sum. (19) SAD BANK, LT

177 I.C.
1938 A

—S. 81—Applicability—Marshalling—Right to claim—Conditions—First mortgagee releasing one property from mortgage and then suing for sale of other item—Subsequent mortgagee of latter—Claim by to marshalling—Sustainability.

Marshalling implies the existence of two sets of properties one of which is subject to both the mortgages and the other is subject only to the earlier mortgage.

When there are no two items of property sold but only one item, the doctrine cannot be invoked. When there are be marshalled, there being only one properties liable to be sold being subject to mortgages, the doctrine cannot be invoked. right of a mortgagee to release any property

the right of The right to the condition rights of the first mortgagee Where the first mortgagee releases one of two properties mortgaged to him and subsequent

(Pandurang Row, J) MUTHAMMAL, In re.

177 I.C. 681=11 R.M. 367=
1938 M.W.N. 266=47 L.W. 281=
A.I.R. 1938 Mad. 503=(1938) 1 M.L.J. 310.

—S. 81—Subsequent mortgagee purchasing property in execution of his decree and also purchasing rights of prior mortgagee—Right to compel in execution of prior mortgage, sale of properties not purchased by him.

420.W.N. 502.

—S. 82—Mortgage over three properties—Mortgagor selling property No. 3 to X—X retaining consideration agreeing to pay off entire mortgage—Mortgagee subsequently buying property No. 1—Liability of property No. 3 for entire mortgage debt—X, if personally liable.

After creating a mortgage over three properties, the mortgagor sold property No. 3 mentioned in the mortgage instrument to X who did not pay to the mortgagee whole of the price but retained for payment to the mortgagee. The agreement was that the latter should release property No. 3 which he had her two properties. X

virtue of his agreement with him and that the mortgagee was competent to realise the said money from X. The price paid by the mortgagee represented the true value of the property in an unencumbered State. In a suit by the mortgagee to enforce the mortgage against X,

Held, (i) that X was not personally liable for any sum that might be found due on the mortgage; (ii) that the benefit of the contract between the mortgagor and X by which the latter agreed to discharge the whole of the

—Ss. 83 and 84—Deposit of money by subsequent mortgagee to credit of prior mortgagee—Latter not complying with terms of S. 83—Subsequent mortgagee's right to interest on amount deposited from

T. P. ACT (1882), S. 83.

Where a subsequent mortgagee retains a part of the consideration money in order to discharge a prior mortgage and deposits that amount in Court under the pro-

terms of the Act. If he does not do so, it is in full discharge of his dues.

42 O.W.N. 1177.

—Ss. 83 and 84—Deposit to credit of surviving

of the surviving mortgagee and to that of the estate of the deceased mortgagee expressly or by necessary implication, impleading his sons and his heirs and it is subsequently found that one of the sons had no right to any part of the mortgage money, interest ceased to run from the date of the deposit for possibly from the time when the notice required by S. 83 had been served on those

money. (*Iqbal Ahmad, Harris and Allsop, Jj.*)
RAM GOPAL v. LACHHMAN DAS.

I.L.R. 1938 All 767—178 I.C. 609—

1938 A.L.J. 61—1938 O.W.N. 925—

11 E.A. 123—1938 A.L.R. 630—

1938 A.W.B. (H.C.) 417—

A.I.R. 1938 All 423 (F.B.).

—Ss. 83 and 84—Deposit—Validity—Deposit in
Guardian
effective

T. P. ACT (1882), S. 92.

deposit and to surrender possession of the properties. But if the mortgagor after keeping the money in deposit for some time, subsequently withdraws the deposit from

(*Venkatasubba Rao and Newsam, Jj.*) SUPPAN CHET-
1938 M.W.N. 356—

A.I.R. 1938 Mad. 405.

—Effect of—Suit on

leading a lat mortgage—

purchase—Rights against

non impleaded later mortgage.

Under old S. 89 of the T. P. Act, on the making of

a security as well as the

extinguished and for the

er his security there is

conferred by the decree.

made a party to a suit

ot affected by the decree

raser in execution of such

a decree, obtains no title whatsoever which could prevail

against the second mortgagee or purchaser in execution

of a decree obtained on the second mortgage. (*Courtney-*

Terrell, C.J. and Manohar Lal, J.) GOBIND SARAN

SINGH v. RAM AUTAR SINGH. 16 Pat. 709—

174 I.C. 455—10 R.P. 518—4 B.R. 443—

1938 P.W.N. 86—18 Pat. L.T. 227—

1 Pat. 170.

did mort-

not come

he is not,

rights of a

prior mortgagee whose mortgage has been redeemed

with the money advanced by him. (*Sen, J.*) PADMA

LOCHAN ROY v. SHAIK AJINADDIN. C.W.N. 1106.

—(as amended), S. 92—If retrospective.

Per N. J. Wadia, J.—S. 92 of the T. P. Act (as

amended) has retrospective effect. (*Broomfield and*

Wadia, Jj.) ISAP = UMARJI 174 I.C. 188—

10 R.B. 431—39 Bom. L.R. 1309—

A.I.R. 1938 Bom. 115.

gagee, the deposit, though made earlier, is not valid.
(*Venkatasubba Rao and Newsam, Jj.*) SUPPAN CHET-
TIAR v. RANGAN CHETTI.

A.I.R. 1938 Mad. 405.

—S. 84—Effect of valid deposit—Mortgagee's profits—

Usufructuary mortgage—Deposit

of mortgagee in possession &

withdrawal of deposit by mortgagor

duces money again in Court—Rights to mesne profits.

A mortgagor, in the case of a usufructuary mortgage,

who makes a valid deposit, would be entitled to mesne

profits from the mortgagee in possession if the latter

unreasonably and with out just cause refuses to accept the

1938 Rang. L.R. 430—177 I.C. 766—11 B.R. 164—

A.I.R. 1938 Rang. 306 (F.B.).

—(as amended in 1929) S. 92—Applicability

insolvency proceedings pending on 1-4-1930—Claim

to priority by mortgagee having off prior mortgagee—

The appellant obtained a decree against two brothers

on 9-4-1927, creating a charge in his favour on a

house of the two brothers subject to two previous mort-

gages existing on the house. On 10-1-1928, the res-

pondent paid off the two previous mortgages on behalf

T. P. ACT (1882), S. 92.

of the brothers and on 29-1-1928, the brothers executed a mortgage to the respondent of the said house. The mortgagors applied in insolvency on 11-11-1929 and were adjudicated insolvents on 13-12-1930 and a receiver was appointed. The receiver proceeded to sell the house which was all along in the possession of the insolvents. The appellant and the respondent as secured creditors consented to the sale on condition that their rights would attach to the sale proceeds. After the sale each of them claimed priority over the other, the respondent claiming subrogation to the rights under the previous mortgage he had paid off, while the appellant claimed as a prior creditor, because the respondent had not taken to subrogation as he had not taken payment to that effect as required by the Transfer of Property Act, as amended in 1929, which was retrospective.

in the original proceedings on the record so applied to be brought, i.e., the insolvency which commenced on 11-11-1929, (2) that no claim to priority was a part of the insolvency proceedings

without a registered agreement and was entitled to priority over the appellant in respect of the sale proceeds of the house, (*Dhootia and Sen, J.J.*) CHUNILAL DEEPCHAND V BIBUBAI GULAM.

177 I.O. 657-11 R.B. 115-
40 Bom L.R. 517-A.I.R. 1938 Bom. 386.

—S. 92 (as amended in 1929)—*Applicability—Redeeming co mortgagor.*

S. 92 does not apply in the case of a mortgagor. But it does apply in the case of a co-mortgagor and in deals

40 Bom L.R. 1001-A.I.R. 1938 Bom. 608
—S. 92 (as amended by Act XX of 1929)—*Co-mortgagor redeeming entire mortgage—If can claim contribution from co-mortgagors by foreclosure or sale of their shares—Punjab*

If a subsequent mortgagee or purchaser pays off a

much stronger than that of a subsequent mortgagee or purchaser who pays off a prior mortgage, for, under the law it is incumbent on the mortgagor to pay the entire mortgage charge before he can redeem his own share of the mortgage in full.

(*J.J.*) A. GANGA S.

—S. 92 (as amended in 1929)—*Applicability—Redeeming co mortgagor.*

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If a subsequent mortgagee or purchaser pays off a

T. P. ACT (1882), S. 92.

Where the entire mortgage dues have been paid up by more than one person and the mortgagee has been redeemed in full, there is nothing in the proviso to S. 92 of the T. P. Act which would prevent one of such persons from claiming the right to be subrogated in the place of the mortgagee to the extent of the amount contributed by him. (*Sen, J.*) PADMA LOCHAN ROY V. SHAIK AJIMADDIN.

—S. 92 (as amended)—*Principles underlying—Applicability as a rule of equity—Circumstances.*

The principles underlying S. 92 of the Transfer of Property Act (as amended) ought to be taken as a rule

174 I.O. 188-10 R.B. 431-
39 Bom L.R. 1309-A.I.R. 1938 Bom. 115.

—S. 92 (as amended in 1929)—*Retrospective*

provisions of the amended S. 92 of the Trans-

except in

April, 1930, in

that date.

(*Thomas, C. J., Zia ul Haq and Hamilton, J.J.*) B.

101-

(B.).

ended
by the Act of 1929 have retrospective effect. (*Sen, J.*) PADMA LOCHAN ROY V. SHAIK AJIMADDIN.

42 O.W.N. 1106.

—S. 92 (as amended in 1929)—*Scope—If retrospective—Purchaser of mortgaged property discharging portion of mortgage debt prior to amendment—Claim to partial subrogation—Sustainability.*

S. 92 of the T. P. Act, as amended in 1929, is not retrospective, and under the law which prevailed prior to the amendment a purchaser of mortgaged property

Abdur Rahman, J.J.) SRINIVASALU NAIDU V. DAMODARASWAMI NAIDU.

1938 M.W.N. 708-A.I.R. 1938 Mad. 779.

—S. 92 (as amended in 1929)—*Scope—Retrospective operation.*

S. 92 of the T. P. Act as amended in 1929 is retros-

pective operation.

S. 92 of the T. P. Act as amended in 1929 is retros-

pective operation.

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T. P. ACT (1882), S. 92.

—S. 92, Paras 1 and 3 (as amended)—*Applicability—Purchaser of portion of mortgaged property redeeming whole—Position and rights of.*

Where a purchaser of a portion of the mortgaged property redeems the property, he is in the position of a co-mortgagor and his case falls under para 1 and not para 3 of S. 92 of the T P Act. Hence on redemption, he would, according to para. 2 of S. 92, be subrogated to the rights of the original mortgagee. (*Thomas, C J and Z a ul-Hasan, J.*) KUNDAN LAL v. FAKIR BAKSH 1938 O L R 204 = 1938 O A 472 = 1938 P W N 489

—S. 100—Charge—Creation—Agreement to mortgage—Effect of—If creates charge. See TRANSFER OF PROPERTY ACT, SS 58 AND 100, 40 BOM L R 545

—S. 100—Charge—Creation of—Compromise in execution proceedings—Attachment of property continued—Stipulations that judgment-debtor should not transfer attached property till payment of entire decretal amount—Charge on property—If created

No doubt mere attachment of property does not create a charge on the property in favour of the attaching creditors. But where the parties enter into a compromise in the execution proceedings whereby not only the attachment of the property is continued but it is specifically stated that until the payment of the entire decretal amount the judgment debtor shall not transfer the attached property by mortgage, sale or gift to any other person, and that in default of payment of the instalments fixed the decree holders would be entitled to realize the entire decretal amount from that property there can be no doubt that a charge upon the property is clearly created in favour of the decree holders. (*Tek Chand, J.*) TIRATH RAM v. OFFICIAL RECEIVER FERROZPORE 177 I O 332 = 11 R L 296 = 40 P L R 429 = A I R 1938 Lah 509

—S. 100—Charge—Creation—Mortgage by co-sharer of his own share as well as of share of another co-sharer to be pre-empted—Subsequent pre-emption—Charge on pre-empted share—If created. See T P ACT, S. 43 1937 A W B 1070 = A I R 1938 All 22

—S. 100—Charge—Liability to arise in future—Validity

A valid charge on immovable property could be created to secure a contingent liability or to take effect on a future contingency. (*Spargo, J.*) U L A T v. U PON GAUNG 177 I O 601 = 11 R R 148 = A I R 1938 Rang. 145

—S. 100, Proviso—Applicability—Auction-purchaser—Nankar created by Settlement Court decree—If constitutes charge—Liability of auction-purchaser of property to pay nankar arrears.

An auction purchaser takes the property of the judgment-debtor subject to the charge on that property. A purchase by an auction-purchaser is not a transfer to which the T P Act applies. As the T P Act does not apply to him, the proviso to S. 100 of the Act does not apply to him, and consequently he can get no benefit under it. Nankar created by a Settlement Court decree and entered regularly every year in the under proprietary khatwa and also in the wad-ul-aziz, constitutes a charge on the village. Consequently a mortgagee of nankar rights is entitled to recover arrears of the said nankar from an auction-purchaser of the village, and the latter cannot avoid the liability of payment by virtue of S. 100 of the T.P. Act on the ground that he was a bona fide transferee without notice. (*Srinivasa, Ag C.J., Z a ul-Hasan and Hamilton, J J.*) HAR NARAIN v. BANK OF UPPER INDIA 172 I O 855 = 1938 O A 70 = 10 R O 197 = 1938 O W N 62 = A I R 1938 Oudh 84 (S.B.).

T. P. ACT (1882), S. 106.

—S. 101—Mortgage, if extinguished—Mortgaged properties under attachment against the owner in execution of money decree—Mortgagee purchasing them during the continuance of attachment—Effect. See C. P. CODE, S. 64 1938 M W N, 60.

—Ss 105 and 107—Applicability—Municipal slaughter-house and fish-bazaars—Right to collect fees of—Letting of—If lease—Essentials of validity—Lease for one year recurring yearly—Rent of value of over Rs. 1,000—Execution by lease alone—Signature of President and two Councilors affixed after registration—Sufficiency—Sworn upon—Maintainability—Contract Act, S. 65—Madras District Municipalities Act, Ss. 68 and 69.

The letting by a Municipal Council of the right to collect the fees of the municipal slaughter-houses and fish bazaars is a lease as defined by S. 105 of the T. P. Act, the right to collect the said fees amounting to profit arising out of land and therefore immovable property. Under S. 107, such a lease must be executed both by the lessor and the lessee and a lease for one year reserving an yearly rent has to be made by a registered instrument. Where such a lease is executed by the lessee alone and registered, it is invalid under S. 107. Where it is not executed on behalf of the Municipal Council before registration, it is not in conformity with the requirements of S. 107, although subsequent to registration the President and some members of the Municipal Council put their signatures on it; and where the contract is of more than Rs. 1,000 it is not valid and binding in the absence of proof that the Municipal Council passed a resolution authorising the President or the members to execute such lease as required by S. 68 of the Madras District Municipalities Act. Failure to comply with Ss. 68 and 69 of the District Municipalities Act renders the lease unenforceable and incapable of being sued on. But if the lessee has had the advantage of the lease, the invalidity of the lease would not prevent the Municipal Council from recovering such amount as may be found reasonable under S. 65 of the Contract Act. (*Abdur Rahman, J.*) MOHAMED ROWTHER v. THE TINNEVELLY MUNICIPAL COUNCIL. 47 L W, 688 = 1938 M W N 684 = A I R. 1938 Mad. 746.

—S. 105—'Lease'—Kabuliyat executed by occupant of premises to owner of premises—If creates lease—Admissibility against executant.

A kabuliyat executed by a person occupying certain premises and accepted by the owner of the premises can in no way be considered to be a lease as defined by S. 105, T. P. Act, and is not sufficient to bestow title on the occupant of the premises. But though it does not operate as a lease it is not on that account inadmissible against the executant himself, when the kabuliyat contains a statement against his own interest. (*Mahomed Ismail, J.*) MAHOMED HASAN v. BUDDHU. 172 I O 873 = 10 R A 445 = 1938 A L R. 60 = 1937 A W R. 1085 = 1937 A L J. 1297 = A I R. 1938 All 32.

—S. 106—Applicability—Leased for—Building purposes—Lessee to have no right in trees on land—Covenant against alienation without consent of lessor—Term not mentioned—Inference—Presumption of permanency—Easement—Lessee's right to compensation.

There is no presumption, from the mere fact that a lease is for building purposes, that it creates a permanent tenancy. In the absence of anything in the lease itself the ordinary rule laid down in S. 106, T. P. Act should be applied and the Court should infer a monthly tenancy only. The purchaser of a superstructure standing on land belonging to a temple, classed as 'village site paramboke' entered into negotiations with the

T. P. ACT (1882), S. 106.

lease, which had the lessee and (which was a tiled house thereon, that the lessee was to pay ground rent at a certain rate per year to the temple, that he shall have no right to the trees on the land and that he shall not sell or encumber the house without previous intimation to the lessor nor shall he alienate to persons belonging to communities not approved by the lessors. In case of default either in payment of rent or fulfilment of the conditions, the lessor was entitled to give notice and if that notice was not complied with the lessee was to pull down the superstructure and give vacant possession to the temple. The lease however, contained no stipulation as to the term for which it was to run. It was found that the lessee was not guilty of breach of any of the conditions of the lease.

Held, that the term of the lease had to be inferred from the writing in which it was embodied, that there was no presumption that the lease was for any particular period or perpetual, and that the proper legal view was that it was a monthly lease.

Held further, that S. 51 of the T. P. Act applied to the case, so as to entitle the

T. P. ACT (1882), S. 107.

an indefinite term, which as soon as three months' rent is in arrear, reduces the tenancy to one at will for on that date the landlord is entitled to eject the tenant. There is a contract to the contrary and the holding cannot be regarded as a monthly tenancy (*Stone, C. J. and Bose, J.*) **ABDUL RAZAK v. SETH NANDLAL.**

1938 N I J. 317—A I R. 1938 Nag 506.

—S. 106 (as amended)—Service of notice—Procedure—Notice by Registered post—Presumption

Where a registered notice was returned with a note 'refused', in view of the amendment of S. 106, T. P. Act and of the presumption that the posting of a letter in due course raises, it cannot be said that there has not been a proper service of the notice. (*Ismail, J.*) **HACHCHA LAL v. LACHMAN.** 176 I O. 393=

11 B. A. 100—1938 A I R. 607—1938 A L J. 511=

1938 A. W. R. (H. C.) 328—A I R. 1938 Ail 388.

—S. 107—Lease of house for 8 months in writing

—Registration—Necessity. See EVIDENCE ACT, S. 91

—LEASE. 1938 O. A. 785—1938 O. W. N. 1080.

—S. 107—Lease reserving yearly rent not regis-

a yearly
eye of law
month.

In such a case, (*Wadsworth, J.*) **SHANMUGHA DESIKA GNANASAMBANDA PANDARASANNADHI v. ANANTAKRISHNAN SWAMI NAIDU.**

48 L. W. 894=

1938 N I W. N. 1236.

—S. 106—Contract to the contrary—Agreement of tenancy—Construction.

A letter embodying an agreement of tenancy was as follows:—"We rent the vacant land on a fixed rent of Rs. 31 per month and declare that we will pay the rent by the fifth of each month and when it will be necessary to give *khos* possession we give you within 7 days"

Held, that there was within the meaning of S. Act, and that the tenancy terminable by 15 days and with the end of a month effect of the concluding the tenancy was determined by S. 111 of the Transfer of Property Act, the tenant covenanted to give *khos* possession within seven days of such determination

Held, further, that even if the letter of reducing the statutory period of 1 days must expire with the end of a month. (*Panridge, J.*) **BAIDYANATH QNKERMULL MANICKLAL.**

I L R. (1938) 2 Cal 261—A I R. 1938 Cal 656.

P. Act, S. 51.

The Mohunt of a thakurdari settled a piece of homestead land with the defendant in 1928 on a verbal agreement for a permanent lease. The defendant paid a sum of Rs. 250 to the Mohunt as salam and erected a *pocca* structure on the land. Subsequently that Mohunt was removed and was succeeded by the plaintiff who sued to eject the defendant from the land. The defendant had taken no steps to get a registered lease or to get specific performance of the oral agreement

able in law, and he was not entitled to retain possession as the permanent lease set up by him was not

said that there was any case of money having been

1323

T. P. ACT (1882), S. 108.

the analogy of S. 51, T. P. Act. (*Agarwala and Varma, JJ.*) MAINA SAHAI v. BALAK DAS. 177 I.O. 522—
4 B.R. 823—11 R.P. 151—1938 P.W.N. 386—
A.I.R. 1938 Pat 435

—S. 108 (c)—Effect of—Proprietor interfering with sub-lessee—Remedy—Measure of damages.

S. 108 (c), T. P. Act, secures to the lessee the benefit of an unqualified covenant for quiet title. Where the lessee of a theatre grants a lease of the theatre to another person for a certain period but before the expiry of the period, the original lessor, the proprietor of the theatre who has previously served the lessee with a notice determining the lease, intervenes and prevents the sub-lessee from using the theatre and the latter is compelled to take a fresh lease from the proprietor on payment of an additional sum, there is a breach of covenant for quiet enjoyment, which entitles the sub-lessee to bring a suit for damages against the original lessee. The sub-lessee is entitled to recover from the lessee the extra amount which he was required to pay to secure a fresh lease from the proprietor over and above other damages. (*Niyogi, J.*) GAJADHAR v. RAMBHAN.

A.I.R. 1938 Nag 439.

—S. 108 (j)—Assignment of lease—Some of heirs of deceased lessee—If can be sued for rent.

A suit for rent cannot be decreed against some only of the heirs of a deceased lessee, when the plaintiff lessor admits an assignment of the lease in favour of another it does not prove that the heirs in possession (*S.K. Ghosh and Pt.*

the transferee—Mortgages from lessee with knowledge of original lease and its terms—Subsequent payment of rent by mortgagee—Lessor, if can sue such mortgagee for rent.

S. 108 (j) of the T. P. Act while giving the lessee the right to transfer his interest, also lays down that the lessee shall not by reason only of such a transfer cease to be liable for the obligations under the lease. This

and all the rights under the lease. Where a mortgagee from a lessee had not only notice of the terms of the original lease between his mortgagor and the mortgagee but actually undertook by an express mortgage in his favour, to pay the lessor and did in fact pay it to him

applied to a case where the mortgagee has paid rent to the lessor and the latter has accepted it from him (*Niamatullah and Varma, JJ.*) GRENDRA NARAIN v. GANGA NARAIN. I.L.R. 1938 All 288—
174 I.O. 845—1938 A.T.R. 252—10 R.A. 551—

T. P. ACT (1882), S. 122.

end of 1324. Ordinarily of course the lease will last up to the midnight of the 1st Baisakh, 1325. But the express stipulation in the lease that the time limited by the lease is up to the end of 1324 clearly indicates that there is an express agreement to the contrary within the meaning of S. 110 of the T. P. Act. In view of this express agreement between the parties, the lease lasts only up to the last day of the year 1324 H.S., and does not last up to the midnight of the 1st Baisakh of the next year. (*Naum Ali, J.*) DEB DAS LALA v. SK. ABDUL GANI. I.L.R. (1938) Cal 134—
177 I.C. 880—11 R.O. 285—67 L.J. 291—
42 C.W.N. 443—A.I.R. 1938 Cal. 358.

—Ss. 110 and 106—Monthly tenancy commencing from 1st of a month—Notice to quit—When should expire.

The second paragraph of S. 110, T. P. Act is not independent of the first paragraph. If a lease is said to commence from a certain date, it means from the end of that date, and will have another day added on at the end. Where, therefore, a monthly tenancy is expressed to commence from the 1st of a month, the notice to quit should be so framed as to expire at the end of the 1st of the succeeding month. In such a case a notice to quit expiring at the end of the month is invalid. (*Amir Ali, J.*) CHARU CHANDRA GHOSE v. BANKIM CHANDRA SETT. 42 C.W.N. 1115.

—S. 111—Registered lease granted before expiry

acts done under it in the of the registered 'lease' trespasser. (*Stone, C.J.* and Purand, J.) MULJI SICKKA & CO. v. NUR-MOHAMMAD. A.I.R. 1938 Nag. 377.

—Ss. 111 (d) and 111 (c)—Tenures created before passing of Act—Acquisition of such tenures—If can merge them in superior right.

Where tenures are created before the passing of the Transfer of Property Act, the acquisition of such tenures

(*Ali and Remfry, JJ.*) KUMAR CHANDRA SINGH v. SARAT CHANDRA GOSWAMI. A.I.R. 1938 Cal. 128.

reasonable time to do so from the date of service of notice. Otherwise the notice is bad. (*Mitter and Birnau, JJ.*) PRAVAT CHANDRA EYAM v. BENGAL CENTRAL BANK LTD. I.L.R. (1938) 2 Cal 434—
42 C.W.N. 761—A.I.R. 1938 Cal. 589.

tion of the parties evidently is that the lease is to commence from the beginning of 1318 and is to end at the

and the donor is entitled to revoke the registered deed of gift of immovable property prior to its acceptance

T. P. ACT (1882), S. 123

(*Vadsworth, J*) PAPATHI AMMAL v. DORAISWAMY NAICKER. 48 L. W. 764=1938 MLW N. 1224

—S. 123—Applicability—Buddhist religious gifts. See BUDDHIST LAW (BURMESE).

A.I.R. 1938 Rang. 303.
—Ss. 130 and 132—Applicability—"Pahunch"—Transfer of—Form of—Equities.

A pahunch is an ordinary receipt. At best it evidences acknowledgment of a delinquent claim. Undoubtedly it is only transferable by the assignor being subject to the provisions thereof. (*Nelka, J*) JHANGALDAS CHIMAN DAS v. CHETUMAL HULCHAND. 32 S. L. R. 640=10 B. S. 220=173 I. O. 591=A.I.R. 1938 Sind 24.

—S. 130—Assignment of debt—Conditions. An assignment of a debt to be valid must be of the whole debt. Where partners in a firm become insolvent and there is also a minor partner, the assignment by the Official Assignee of a debt due to the firm cannot be said to be of the whole debt because the minor's interest in the partnership cannot be assigned. Even assuming that assignment of part of a debt can be made, assignment of part which is indefinite is invalid. (*Lord Williams and Jack, JJ.*) GHISULAL GANESHILAL v. GUMBHIKIMULL. A.I.R. 1938 Cal. 377.

—S. 130—Form of transfer—Money in deposit in bank in name of party—Agreement in writing between him and another—Intention that thereafter one part of it should belong to one of them and the other part to the other—Effect—If amounts to transfer of actionable claim.

Where it is agreed between the parties to a document that one portion of certain money lying in deposit in a bank in the name of one of those parties should thenceforward belong to one of them and the other portion to the other, the document can be viewed as an assignment of an actionable claim within the meaning of S. 130, T. P. Act. That section does not require that such an assignment should be in any particular form. Words are necessary to effect the transfer of a beneficial interest in movable property, if the intention of transfer is clear from the language used. If the intention is fairly clear that the money in deposit in the bank should be split up into two parts, one of which is to go to one of the parties and the other to the other party, that operates as an assignment of the entire debt in two separate portions to two separate individuals. (*Pandurang Row and Venkataramana Rao, JJ.*) RAMASWAMI CHETTIAR v. MANIKKAM CHETTIAR. 176 I. O. 617=11 B. M. 127=1937 M. W. N. 1249=47 L. W. 118=A.I.R. 1938 Mad. 236=(1938) 1 M. L. J. 66.

—S. 130 (1)—Applicability—Liable future—Relationship not yet arisen. See Ss. 3 AND 130 (1). A.I.R.

—S. 130 (1)—Effect—Dispensing with—Transfer of legal title.

T. P. AMENDMENT. ACT (1929), S. 63.

—S. 130 (1)—"Hypothecation" or "charge"—If a transfer.

A mere "hypothecation" or "charge" is a "transfer" for the purpose of S. 130 (1) (*Braund, J.*) AVIET STEPHENS, *In the matter of*. 175 I. O. 786=11 B. R. 11=A.I.R. 1938 Rang. 1.

—S. 130 (1)—Right to sue conferred by—If conflicts with "reputed ownership" under S. 52 (2) (c) of

the T. P. Act, and the right to sue rises to a condition of "reputed ownership" under S. 52 (2) (c), Presidency Towns Insolvency Act, are two entirely separate and distinct things. It may very well be that so far as the assignee's right to sue is concerned it is complete, and yet there may be left with the assignor such an appearance of continued or reputed ownership as to invoke the order and disposition clause. (*Braund, J.*) AVIET STEPHENS, *In the matter of*.

175 I. O. 786=11 B. R. 11=A.I.R. 1938 Rang. 1.

—S. 134—"Transferee"—Person holding charge under S. 53 (6)—Rights of. See T. P. ACT, S. 53 (6). 48 L. W. 768.

—S. 135—Transfer by mortgage—Payment by mortgagor to mortgagee without notice of transfer—Transferee—When bound.

Payments of interest and payments on account of principal, made by a mortgagor to a mortgagee after, but without notice of, a transfer must, in absence of collusion, be allowed to the mortgagor as against the transferee. The principle applies to a case when the mortgagor has paid off the whole of the mortgage debt in the absence of notice. The question of notice will however only arise if payment has in fact been made; and if it is shown that no payment was in fact made by the mortgagor, no question of notice arises, and the transferee is entitled to recover the amount due on the

the intention of the parties that the transaction was to be effective. (*Fort, J.*) FATEH BHADUR v. MR. SUBHAGO KUER. 175 I. O. 563=4 B. R. 614=11 B. P. 1=A.I.R. 1938 Pat. 265.

—S. 136—Applicability to decrees.

A decree does not come within the category of actionable claims, but the principle involved is the same. (*Leach, C. J., Varadachariar and Pandurang Row, JJ.*) P. LINGAMURTHI, *In the matter of*.

11 B. R. 1938 Mad. 399=174 I. O. 44=10 B. M. 641=47 L. W. 192=1938 M. W. N. 220=A.I.R. 1938 Mad. 276 (F.B.).

42 C. W. N. 38.

assignee sues him. (*Braund, J.*) AVIET STEPHENS, *In the matter of*.

175 I. O. 786=11 B. R. 11=A.I.R. 1938 Rang. 1.

ed in those sections have no retrospective effect. (*Thomas, C. J., Zia-ul-Haqq and Hamilton, JJ.*) KUNDAN LAL v. FAQIR BAKSH. 174 I. O. 7

T. F. AMENDMENT ACT (1929), S. 63.

10 B.O. 264=1938 O.W.N. 401=1938 O.A. 270=
A.I.R. 1938 Oadh 127 (P.R.).

S. 63 (d)—Construction and Scope—"Proce-
ding on 1-4-1930"—Insolvency proce-
priority
pending
TY ACT

(AS AMENDED IN 1929), S. 92.

TREASURE TROVE ACT (VI)

Offence under—Abetment of—Person

ing of treasure but afterwards sharing same with finder
—If guilty.

A person who was not present at the finding of a
treasure and who has had no sort of connection with the
matter up to the time when the actual finder decides not

TRUST.

1938 A.L.J. 191=1938 O.W.N. 245=

1938 O.L.R. 104=1938 A.L.R. 138=

1938 A.W.R. (P.O.) 74=40 P.L.R. 247=

4 B.R. 317=66 C.L.J. 524=10 B.P.O. 202=

1938 O.A. 371=42 O.W.N. 938=1938 M.W.N. 621=

1938 P.W.N. 548=40 Bom L.R. 724=

A.I.R. 1938 P.C. 73=(1938) 1 M.L.J. 359 (P.C.).

Where by a deed of relinquishment a father relin-
quished all his rights and property to his son and pur-
ported to put him in possession forthwith and the son
by means of an *sharanama* undertook among other
things to pay a certain sum to his illegitimate brothers

when it changes hands. When the money is deposited
in a bank it becomes a part of the assets of the bank.
the latter becomes,
person who deposits

—Public or private—Criterion—Intention of
founder as gathered from circumstances.

it changed hands,

Zia ul Hasan, J.) RAM DULAREY v. RAM LAL.
1938 O.A. 945=1938 O.W.N. 660.

177 I.C. 924=39 Cr.L.J. 953=1938 M.W.N.
47 L.W. 813=A.I.R. 1938 Mad
(1938) 1 M.J.

TRUST—Appointment of trustee—Appoint-
himself as trustee by person having right of
ment—Legality

The appointment of himself as trustee by a person
having the right of appointment is not *per se* illegal
(Pankridge, J.) PURAN CHAND v. ADVOCATE
GENERAL OF BENGAL. 42 O.W.N. 201.

—Creation of—Essentials—Charitable endowment
by a Hindu in Punjab.

ment by a
What is
cified and
should be

set apart as dedicated to that purpose. It is necessary
that the donor should divest himself of the prop-
erty. The evidence of divestiture may be contempor-
aneous in such a case the subsequent acts and conduct
of the donor are irrelevant and cannot re-invest him.
(Lord Thankerton) SUNDER SINGH v. SUNDER
SINGH 115 I.A. 106=172 I.C. 983=47 L.W. 239=
I.L.R. 1938 Lah. 63=32 S.I.R. 350=

—Suit on behalf of—Right to maintain—
Public charitable or religious trust created by Hindu
under will—Appointment of son as trustee for life and
after him has sons—Son guilty of misconduct and
breach of trust and leaving British India—Suit by
grandsons for possession and mesne profits of trust prop-
erties illegally alienated by their father—Maintainab-
ility—Proper remedy

Persons who are not the present trustees are not en-
titled to maintain in that capacity a suit on behalf of
the trust for possession of immovable properties of the
trust or for mesne profits. Where under a will execut-
ed by a Hindu a trust is created in respect of certain
charities, and the testator appoints his son as trustee for
life and after the latter's death his sons (i.e., the testator's
grandsons) as trustees, the grandsons cannot during their
father's lifetime maintain a suit for possession of trust
properties. The fact that their father has been guilty of
misconduct and breach of trust and has alienated the

TRUST.

trust properties or that he has totally failed to perform the trust and has left British India would not be sufficient for holding that the father *ipso facto* ceased to be a trustee and that the plaintiffs directly became trustees

gious trusts, § 53 or S 73 of the Madras Hindu Religious Endowments Act will govern the case (*Varadachariar and Abdur Rahman, Jf.*) ARAVAMUDHU IVENGAR v. RAMANUJA IVENGAR

1933 M.W.N. 1163—48 L.W. 770—
(1938) 2 M.L.J. 982

—Tracing—Deposit by employees as security—Trust if created—Liquidation—Preferential right of such depositors. See COMPANIES ACT, S 229.

1938 M.W.N. 7.

—Transfer to trustee of properties for payment of debts of transferor—Creditors rights—Communication to creditor—Necessity—Right of revocation.

Where a legal transfer of property has been made to trustees for payment of the debts of the owner transferor, the creditors being neither parties nor privies thereto the creditors do not thereby become *cestui que trust*, and the trustees are mere mandataries. Until the mandate has been acted upon, the owner of the property, who alone stands towards the trustees in the relation of *cestui que trust*, can recall the money and authority at pleasure. It is an arrangement by the debtor for his own convenience only, and there is no privity between the agent and the creditors. Where, however, the trust in

induced to a forbearance in respect of their claims,

RAO 48 L.W. 564—1938 M.W.N. 1086—
(1938) 2 M.L.J. 1054

—Trustee—Co-trustees—Joint status of—Suit by one only without impleading others—Maintainability

The office of trustee, irrespective of the number of trustees, is a joint one and co-trustees form, as it were,

—Trustee—Co-trustees—Transfer management by one to another for legality.

The transfer of the right of a trustee for consideration is void being against the right of a trustee or *hukdar* of a *char*. The charity or manage the endowed property cannot be transferred for consideration, although the donee may be a member of the same family as the transferor-trustee. (*Venkatasubba Rao and Abdur Rahman, Jf.*)

Y. D. 1938—84

TRUST

VEDAKANNU NADAR v. RANGANATHA MUDALIAR

1938 M.W.N. 983—48 L.W. 829—

A.I.R. 1938 Mad. 982—(1938) 2 M.L.J. 663.

—Trustee de facto—Right to sue on behalf of trust, on himself
e may sub-
to trustee as
action. His
ongdoer. A
uisee *de son*
tert. He has no right to maintain suit on behalf of the trust even if the suit is taken to have been instituted for the benefit of the trust (*Venkatasubba Rao and Abdur Rahman, Jf.*) VEDAKANNU NADAR v. RANGANATHA MUDALIAR.

1938 M.W.N. 983—48 L.W. 829—

A.I.R. 1938 Mad. 982—(1938) 2 M.L.J. 663.

—Trustee—Power to set up adverse title.

Per *Vincent Bose, J.*—No person who has accepted the position of trustee or of *guam* trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf until he has obtained a proper discharge from the trust with which he has clothed himself. (*Stone, C J., Bose and Digby, Jf.*) ASARAM v. LUDHESHWAR. 177 I.O. 6—
11 E.N. 109—A.I.R. 1938 Nag 335 (F.B.)

—Trustee—Powers of—Permanent lease of waste lands—Validity—Presumption as to validity of ancient transactions—Applicability—Discretion of Court—Considerations.

Courts have a discretion in drawing presumptions as to the propriety of transactions which took place many years ago, even when that transaction is a permanent lease by a trustee of waste lands belonging to the trust. not with reference to
elapsed before the
nce to the death of
information as to
the circumstances under which the transaction took

trust can in no circumstances be granted. (*Varadachariar, J.*) NELLAYAPPAR KANTHINATHI AMBAL TEMPLE, TINNEVELLY v. ARUNACHALAM PILLAI.

1937 M.W.N. 1188.

—Trustee—Special trustee—Who is—Religious endowment—Gift to temple—Properties conveyed to person described by donor as trustee—Status of.

It is only in a case where there are other persons in

properties in any character except that of the trustee of the temple. (*Varadachariar and King, Jf.*) SUBBA REDDI v. CHENGALRAYA REDDI

A.I.R. 1938 M

T. P. AMENDMENT ACT (1929), S. 63.
10 R.O. 264=1938 D.W.N. 401=1938 O.A. 270=
A.I.R. 1938 Oudh 127 (F.B.).
—S. 63 (d)—Construction and Scope—“Proce-
dings, etc., pending on 1-4-1930”—Insolvency proce-
dings started before 1-4-1930—Claim to priority
by secured creditor raised subsequently—If pending
on 1-4-1930. See TRANSFER OF PROPERTY ACT
(AS AMENDED IN 1929), S. 92.

TREASURE TROVE ACT (VI.)
*Offence under—Abetment of—Person
ing of treasure but afterwards shares
—If guilty.*
A person who was not present
treasure and who has had no sort of connection with the
matter up to the time when the actual finder decides not
to report to the Collector about the finding cannot be
found guilty of the offence of abetment of an offence

when it changes hands. When the money is deposited
in a bank it becomes a part of the assets of the bank

... C. 111-12 C. 111-12 1938 M.W.N. 4
47 L.W. 813=A.I.R. 1938 Mad.
(1938) 1 M.L.J.

**TRUST—Appointment of trustee—Appointment
himself as trustee by person having right of
ment—Legality.**
The appointment of himself as trustee by a person
having the right of appointment is not *per se* illegal
(Panchridge, J.) PURAN CHAND v. ADVOCATE
GENERAL OF BENGAL, 42 C.W.N. 201.

—Creation of—Essentials—Charitable endowment
by a Hindu in Punjab.
For the foundation of a charitable endowment by a
Hindu in the Punjab, no writing is required. What is
necessary is that the purpose be clearly specified and
that the property intended for the endowment should be
set apart as dedicated to that purpose. It is necessary
that the donor should divest him-
self. The evidence of divestiture ma-
terious in such a case the subsequent
of the donor are irrelevant and can-
(Lord Thankerton.) SUNDER SINGH v. SUNDER
SINGH. 65 I.A. 106=172 L.C. 993=47 L.W. 239=
I.L.R. 1938 Lah. 63=32 S.L.R. 350=

TRUST.
1938 A.L.J. 194=1938 O.W.N. 245=
1938 O.L.E. 104=1938 A.L.R. 138=
1938 A.W.R. (P.C.) 74=40 P.L.R. 247=
4 B.R. 317=66 C.L.J. 524=10 E.P.C. 202=
1938 O.A. 371=42 C.W.N. 933=1938 M.W.N. 621=
1938 P.W.N. 548=40 Bom.L.E. 724=
A.I.R. 1938 P.C. 75=(1938) 1 M.L.J. 359 (P.C.).

by means of an *ikrahnama* undertook among other
things to pay a certain sum to his illegitimate brothers
and to put them in possession of certain property on
their attaining majority, it was held that the two

—Public or private—Criterion—Intention of
founder as gathered from circumstances.

—Suit on behalf of—Right to maintain—
Public charitable or religious trust created by Hindu
under will—Appointment of son as trustee for life and
after him his sons—Son guilty of misconduct and
breach of trust and leaving British India—Suit by
grandsons for possession and mesne profits of trust prop-
erties illegally alienated by their father—Maintenance
—Proper remedy

Persons who are not the present trustees are not en-
titled to maintain in that capacity a suit on behalf of
the trust for possession of immovable properties of the
trust or for mesne profits Where under a will execut-

father's lifetime maintain a suit for possession of trust
properties. The fact that their father has been guilty of
misconduct and breach of trust and has alienated the

U P. AGRI REL ACT (1934).

brothers were, on their own showing, guardians of the plaintiff.

Held, that the three brothers were in the position of trustees and were liable in account to the plaintiff for her half share in the profits arising out of the business, and not merely to a half-share in the properties and in the profits as on the date of her father's death, the fact that they were co-owners of the estate of the deceased would not render them liable as guardians. (*Leach, C. J.* and *Abine Rahman, J.*) KATHOOM BEE ABDUL WAHAB Sr.

of the

who have not been impleaded in the suit. Consequently, if the tenure is put up for sale in execution of the decree obtained against him and is purchased *bonems* for him, the purchase does not inure to the benefit of the non impleaded tenants. (A'undkar, J.) NARENDRA NATH ACHARIE v. HINDRANA SATH ACHARIE.

ILB (1938) 2 Cal. 266 = 42 O.W.N. 701 =
A.I.B. 1938 Cal 500

—§§. 89 and 90—Scope and effect of—Partnership
—Leasehold property—Renewal of lease by one partner
—Right of co-partners to benefit of—Presumption.

The Indian Legislature has nowhere indicated an intention to enact an absolute rule of law or an irrebuttable presumption in respect of renewals of leases obtained by one co-partner. There is no warrant for holding that in no case can a partner during continuance of a partnership contract for a new lease to be granted to himself, of property which is in lease to the partner-

...the partner uses funds belonging to the partnership or clandestinely stipulates for a personal benefit in a

[illegible]

444 11070112, J.J.) KARIALINGA RAJIV KAMA-
LINGAM SETTY. 48 L.W. 334= 1938 M.W.N. 851=

A.I.R. 1938 Mad 929—(1938) M.L.J. 790.
—S 90—Scope—Claim to benefit of—Burden of
proof—Lands held by individual
under grant by Government—S

S. 90 of the Trusts Act is base
no person who is in a fiduciary

make a profit out of that position to the detriment of persons who are actually interested with himself in the property held by them all. In other words, a person who is a limited owner by reason of his position must not utilize that position to obtain an advantage to the detriment of his co owners. It is not necessary that the other persons should make out that the advantage was obtained fraudulently or by misrepresentation or by suppression of the true facts. All that the section says is that if there is a person in a fiduciary relation to an-

Age Group	Gender	Percentage of respondents who believe that the U.S. should take action to reduce global warming
18-29	Male	~45%
	Female	~55%
30-49	Male	~55%
	Female	~65%
50-69	Male	~65%
	Female	~75%
70+	Male	~75%
	Female	~85%

of the Trusts Act, unless upon proof that the property belonged to the family as a whole when the lease with full occupancy was granted. (*Rangnekar, J.*) DATTATRAYA SITAKAN *v.* SHANKAR, 175 IC 484= 10 RB. 569=40 Bom LR. 118= A LR 1938 Bom 250.

—S. 90, III. (b)—Applicability—Fiduciary capacity—Grant of Sheri land by Government to member of Hindu joint family—Grantee named in patta individually—Subsequent enlargement of tenure by grant of full occupancy rights to heirs—Benefit of grant—Right of joint family to claim. See HINDU LAW—JOINT FAMILY. 40 Bom L.R. 118.

TRUSTEES AND MORTGAGEES POWERS ACT (XXVIII OF 1866), S. 12—*English mortgage—Receiver appointed under power contained in—Accountability to mortgagee.*

|| ॐ नमो भगवते वासुदेवाय || ॐ नमो भगवते वासुदेवाय || ॐ नमो भगवते वासुदेवाय ||

analogy can be drawn from the law of principal and agent. It is the mortgagee who appoints the receiver and without reference to the mortgagor if so provided the receiver

that he is
it is possible
receiver has
a mortgagee's

1. *Chlorophyll a* (Chl *a*)

Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains.

A.I.B. 1938 Cal. 507.

U. P. AGRICULTURISTS' BELIEF ACT (XXVII OF 1934).—Construction—Duty of Court to have regard

Pedicularis L. = *Silene* = *Caryophyllaceae*

U. P. AGRI. REL. ACT (1934).

ter and Baspai, J.J.) CHUNNI LAL v. AJUDHIYA PRASAD. 173 I.C. 616=10 B.A. 487=

1938 A.L.R. 153=1937 A.W.R. 1173=

1937 A.L.J. 1235=1938 R.D. 104=

A.I.R. 1938 Oudh 184.

TAQI HUSAIN. 175 I.C. 161=1938 O.L.R. 271=1938 R.D. 684=1938 A.W.R. (O.C.) 64=11 R.O. 1=1938 O.A. 466=1938 O.W.N. 573=

A.I.R. 1938 Oudh 184.

—Scope—If derogate from O. 20, R. 11, C. P. Code.

Under this act it is imperative on the Court to pass an instalment decree in certain circumstances. The act does not derogate from O. 20, R. 11, C. P. Code. Under which Court is entitled to pass an instalment decree (*Alloop, J.*) GIRWAR SINGH v. HAR PRASAD

173 I.C. 897=10 B.A. 518=1937 A.W.R. 1074=

1937 A.L.J. 1247=1938 R.D. 65=1938 A.L.R. 189=

A.I.R. 1938 A 52

revenue on house sites

Where the revenue paid by a person was on account of house sites and not on account of 'land' as defined in the Tenancy Act, the revenue payable by such a person is not 'land' revenue within the meaning of S. 2 (2) (a) of the Agriculturists' Relief Act, and hence he is not an 'Agriculturist' as defined in the Act. (*Iqbal Ahmad, J.*) RODA RAM v. MUKAND LAL.

I.L.R. 1938 All 384=1938 R.D. 295=

174 I.C. 921 (1)=10 B.A. 637=1938 A.L.R. 358=

1938 A.W.R. 132 (H.C.)

—S. 2 (2) (f) and Expl. I.
family paying rent of less than annum.

Where a tenancy is held by a joint Hindu family, S. 2 (2) (f) applies to the case, and the whole family which pays the rent of the agricultural land not exceed-

case of a joint family where the total rent is more than Rs. 500 per annum, and then the different members may

1938 A.L.R. 202=173 I.C.

1938 A.W.R. 26 (H.C.)

—S. 2 (2) (f), Expls. II and III.
Joint Hindu family paying annuity—Right to instalments.

U. P. AGRI. REL. ACT (1934), S. 2.

Explanation 2 of S. 2 (2) of the U. P. Agriculturists' Relief Act does not apply to Ch. II, S. 3 of the Act; it is not necessary to resort to that Explanation in the case of a joint Hindu family which holds an agricultural

innum. A exceeding as word.

Such a family is entitled to instalments under S. 3 of the Act. (*Pennet, J.*) KEDAR PRASAD v. SURA NARAIN SINGHA. 174 I.C. 66=1938 R.D. 145=

1938 A.L.R. 216=10 B.A. 544=

1938 A.W.R. 25 (H.C.)=1937 A.L.J. 1367=

A.I.R. 1938 All. 128.

—S. 2 (2) Prov. 1 and 2—Agriculturist—Who is—Payment of income-tax by Agriculturist—If removes him from the class of Agriculturists.

Apart from S. 2 (2) (a), the first proviso to the Section lays down that for the purpose of certain Sections and Chapters of the Act including Chapter V, an agriculturist means also a person who would belong to a class of persons mentioned in parts (a) to (g) of this Subsection, if the limits of land revenue, local rates, rent and area mentioned in these parts were omitted. A person who is an agriculturist by virtue of this

1938 O.W.N. 836=1938 R.D. 738=

177 I.C. 362=11 B.A. 42=1938 O.L.R. 409=

1938 A.W.R. (O.C.) 81=1938 O.A. 631=

A.I.R. 1938 Oudh 208.

—S. 2 (2), Provs. 1 and 2—Interpretation—Persons mentioned in Prov. 1 if subject to rule contained in Prov. 2.

A person who is an agriculturist by virtue of the first proviso to S. 2 (2) of the United Provinces Agriculture Act is so much a member of the rule contained

in the rule contained

under S. 2

(*Thomas, C. J.*)

SHEO RATAN

FYZABAD.

177 I.C. 962=1938 R.D. 810=1938 I.L.R. 454=

1938 A.W.R. (O.C.) 122 (2)=1938 O.A. 768=

1938 O.W.N. 1001=A.I.R. 1938 Oudh 234 (F.B.).

—S. 2 (2), Expl. II—Scope and effect of—Hindu members—If agriculturists—S. 5 and 30—Karta of joint family—Subsequent application—Family—Complicity

Though under Expl. II to S. 2 (2) of the Agriculturists' Relief Act each member of a joint Hindu family or each joint owner or joint tenant may for certain purposes apply for certain benefits conferred by the Act, it is equally clear that each member of a joint family or joint owner or joint tenant cannot claim the

S. 30 of the Act,

ins. S. 30 are ex-

Each member of

as an agriculturist

proceedings for

redemption of mortgages under Ch. III, proceedings under Ss. 37 and 3b, etc. But in other cases than those

U. P. AGRI. REL. ACT (1934), S. 2

expressly covered by the Explanation it is karta of the joint family or the person actually as holding the property or paying the revenue to be treated as the agriculturist, and the other members cannot claim the same benefits and for the purposes of an application under S. 2 IV, therefore, the karta of a joint Hindu family normally the person recorded as owner or person paying revenue, etc., is the only person who can apply and who can be regarded as an agriculturist. If he is found to be not an agriculturist, that concludes the matter and the other members of the family cannot avail themselves of Expt. 11 to S. 2 (2) and apply under Ss. 5 and 30. (*Sulaiman, C. J. and Harries, J.*) ALLAHABAD BANK, LTD., *MEERUT v. PRAKASH NATH.*

L.L.B. 1938 All 12-172 I.C. 951-10 R.A. 414-1938 A.L.R. 52-1937 A.L.J. 970-1937 A.W.R. 890-1937 R.D. 534-A.I.R. 1938 All 12

—Ss. 2 (8) and 30 (4)—Interest—What is included in—Thinks money to be paid by mortgagor lessee—If

is undoubtedly to be dealt with according to the provisions of S. 30 (4) of the Act. The word 'otherwise' in S. 2 (8) makes the provision cover what is called 'rent' in *C. J. and Zia ul-Hasan.*

According to the definition of a mortgage in the T. P. Act, the essence of the transaction is a loan and

Agriculturists' Relief Act. Three exceptions being 'loans' under the Act. A usufructuary mortgage is not one of them. Mortgage money advanced case is clearly within the definition of 'loan'.

1938 R.D. 782-1938 A.L.J. 872-A.I.R. 1938 All 564.

—Ss. 2 (10) (a) and 5—Any decree for money in S. 5—Construction—If includes decree for recovery of price paid and damages

Where a person obtained a decree for the money paid

U. P. AGRI. REL. ACT (1934), S. 4

be secured—Security found to be void—Loan, if unsecured.

A loan that purports to be a secured loan cannot be regarded as such for the purposes of Schedule III of the Agriculturists' Relief Act, if the security given is afterwards found to be void and unenforceable, and such a loan must be regarded as unsecured. (*Zia ul-Hasan and Smith, J.J.*) GOVIND PERSHAD v. SURENDRA NATH

1938 A.W.R. (O.C.) 11-1938 O.A. 167-1938 O.W.N. 220.

—S. 3 (1), Provisions 1 and 2—Scope—Power of Court under—Mortgagor agriculturist—Installments spread over period exceeding four years—Legality—

SINGH. 172 I.C. 991-10 R.A. 452-1938 A.L.R. 75-1938 R.D. 90-1937 A.L.J. 1291-1937 A.W.R. 1078-A.L.R. 1938 All 26. interference in appeal. decided the question of

Smith, J.J. GOVIND PERSHAD v. SURENDRA NATH. 1938 R.D. 293-1938 O.A. 167-1938 A.W.N. (O.C.) 11-1938 O.W.N. 220.

directing payment of decrees in full—if and when the whole

directed to pay the sum if more than six, agriculturists' Relief Act, at liberty to take out there has been default in ion does not say whether otherwise—and that then due would become realistic, *J.J.* GURCHARAN

1938 A.W.R. (H.C.) 700-1938 R.D. 844.

—S. 4—If applies to decrees passed prior to the Act.

The expression 'or in any order for grant of installments passed against an agriculturist' occurring in S. 4 of the Agriculturists' Relief Act, is wide enough to cover ed in respect to a decree Act. When S. 3 is made attention of the Legislature should automatically whether passed.

U. P. AGRI. REL. ACT (1934).

ter and Bapai, J.J.) CHUNNI LAL v. AJUDHIYA
 173 I.C. 646=10 R.A. 487=
 PRASAD.
 1938 A.L.R. 153=1937 A.W.R. 1173=
 1937 A.L.J. 1235=19: : :
 A.I.R.

Costs of original decree—Reductio.

The Agriculturists' Relief Act does not make any deduction in the amount of costs allowed under the original decree. (*Thomas C. I. and*

A.I.R. 1938 Oudh 184.

Scope—If derogate from O. 20, R. 11, C. P. Code.

Under this act it is imperative on the Court to pass an instalment decree in certain circumstances. The act does not derogate from O. 20, R. 11, C. P. Code. Under which Court is entitled to pass an instalment decree. (*Allsop, J.) GIRWAR SINGH v. HAR PRASAD.*

173 I.C. 897=10 R.A. 518=1937 A.W.R. 1074=
 1937 A.L.J. 1247=1938 R.D. 65=1938 A.L.R. 189=
 A.I.R. 1938 A. 52

MAD TAQI HUSAIN 175 I.O.
 1938 R.D. 584=1938 A.W.
 1938 O.A.

S. 2 (2) (a)—Agr
 revenue on house sites.

Where the revenue paid by a person was on account of house sites and not on account of 'land' as defined in the Tenancy Act, the revenue payable by such a person is not 'land revenue' within the meaning of S. 2 (2) (a) of the Agriculturists' Relief Act, and hence he is not an 'Agriculturist' as defined in the Act. (*Iqbal Ahmad, J.) RODA RAM v. MUKAND LAL.*

I.L.R. 1938 All 384=1938 R.D. 295=
 174 I.C. 921 (1)=10 R.A. 637=1938 A.L.R. 358=
 1938 A.W.R. 132 (H.C.)=1938 A.L.J. 135=

S. 2 (2) (f) and Expl.
 family paying rent of less than
 annum

Where a tenancy is held by
 S. 2 (2) (f) applies to the case,
 which is the rent of the tenancy.

claim under Explanation 2 that their share is less than Rs. 500, and that they would be agriculturists. (*Bennet, J.) SURAJ NARAIN SINHA v. KEDAR PRASAD.*

I.L.R. 1938 AH
 1938 A.L.R. 202=173 I.L.
 1938 A.W.R. 26 (H.C.)

S. 2 (2) (f), Expls 2 a
 Joint Hindu family paying an
 respect of holding—If 'Agriculturist'—Right to instal-
 ments.

U. P. AGRI. REL. ACT (1934), S. 2.

Explanation 2 of S. 2 (2) of the U. P. Agriculturists' Relief Act does not apply to Ch. II, S. 3 of the Act; it is not necessary to resort to that Explanation in the case of agricultural innum. A exceeding as word

person in that clause includes a Hindu joint family. Such a family is entitled to instalments under S. 3 of the Act. (*J.) KEDAR PRASAD v. SURAJ NARAIN.*

174 I.C. 111=1938 R.D. 145=
 1938 A.L.R. 216=10 R.A. 544=
 A.W.R. 25 (H.C.)=1937 A.L.J. 1367=
 A.I.R. 1938 All 128.

S. 2 (2) Prov. 1 and 2—Agriculturist—Who is
 Payment of income-tax by Agriculturist—If removes him from the class of Agriculturists.

Apart from S. 2 (2) (a), the first proviso to the Section lays down that for the purpose of certain Sections and Chapters of the Act including Chapter V, an agriculturist means also a person who would belong to a class of persons mentioned in parts (a) to (g) of this Sub-section, if the limits of land revenue, local rates, rent and area mentioned in these parts were omitted. A person who is an agriculturist by virtue of this is not cease to be an agriculturist by the 'income-tax by reason of second proviso to not the payment of Income tax absolutely away the effect of the first proviso but in person belonging to cl (a), only when the

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1938 O.W.N. 836=1938 R.D. 738=
 177 I.C. 362=11 R.O. 42=1938 O.L.R. 409=
 1938 A.W.R. (O.O.) 81=1938 O.A. 631=
 A.I.R. 1938 Oudh 208.

S. 2 (2), Provs 1 and 2—Interpretation—
 Persons mentioned in Prov 1 if subject to rule contained in Prov. 2

A person who is an agriculturist by virtue of the first proviso to S. 2 (2) of the United Provinces Agriculturists' Relief Act is as much subject to the rule contained in Prov. 2 as a person who is an agriculturist by virtue of the second proviso.

and effect of—Hindu
 —If agriculturist—
 30—Karta of joint
 Subsequent application
 competency.

o S. 2 (2) of the
 member of a joint Hindu
 family or each joint owner or joint tenant may for certain purposes apply for certain benefits conferred by the Act, it is equally clear that each member of a joint cannot claim the S. 30 of the Act, ins S. 30 are ex-
 Each member of
 as an agriculturist
 proceedings for
 redemption of mortgages under Ch. III, proceedings under Ss. 37 and 3b, etc. But in other cases than those

U. P. AGRI REL. ACT (1934), S. 2

expressly covered by the Explanation it is only the karta of the joint family or the person actually recorded as holding the property or paying the revenue that can be treated as the agriculturist, and the other individual members cannot claim the same benefits and privileges. For the purposes of an application under S. 5 or Ch. IV, therefore, the karta of a joint Hindu family, who is normally the person recorded as owner or person paying revenue, etc., is the only person who can apply and who

U. P. AGRI BEL. ACT (1934), S. 4

'loan' within the meaning of S. 2 (10) (a) of the Act and the damages decreed could not be deemed to be a decree based upon a loan or upon a transaction which is in substance a loan. (*Mulla, J.*) NARAIN DAS v. RADHA KUAR. 1938 A.W.R. (H.C.) 770 =

1938 R.D. 879 = 1938 A.L.J. 1063.
—S. 2 (10) (b) and Sch. III—Loan purporting to be secured—Security found to be void—Loan, if unsecured.

ILLR. 1938 All IN-172 I.O. 951-10 E.A. 444 =
1938 A.L.R. 59-1937 A.L.J. 970 =
1937 A.W.R. 890 = 1937 R.D. 534 =
A.L.R. 1938 All 12

—Ss. 2 (8) and 30 (4)—Interest—What is includ-
ed in—Takes money to be paid by mortgagor tenant—If

NATH.

1938 R.D. 293 =
1938 A.W.R. (O.C.) 11 = 1938 O.A. 167 =
1938 W.N. 220.

—S. 8 (1), Provisos 1 and 2—Scope—Power of
Court under—Mortgagor agriculturist—Instalments
spread over period exceeding four years—Legality—
small pension—

OF IN THE FORM OF DETAILS OF QUANTITIES, VERIFIED AS AT
cases in favour
'rent' only by
the 'rent' is no

ist to whom Ch.
and spread over
is Court has no
instalments to be
spread over a period exceeding four years. The fact that
the judgment debtor happens to be a military officer
with a small pension does not entitle the Court in

1938 O.W.N. 535 = A.L.R. 1938 Oudh 156.

—S. 2 (10) (a)—Loan—If includes money advan-
ced on usufructuary mortgage.

According to the definition of a mortgage in the
T. P. Act, the essence of the transaction is a loan and

interfere in appeal, but where there is no indication in
the judgment that this point was considered in the Court
below, the position is different. (*Zia ul-Hasan and
Smith, JJ.*) GOVIND PERSHAD v. SURENDRA NATH.

1938 R.D. 293 = 1938 O.A. 167 =
1938 A.W.R. (O.C.) 11 = 1938 O.W.N. 220.

—Order directing payment of decrees in
and when the whole

Agriculturists' Relief Act. The
being 'loans' under the Act, A
not one of them. Mortgage mo-
case is clearly within the defini-
Act. A person borrowing a loan
mortgage in lieu thereof,
gatee, and incurs a 'debt' and is a
gatee. (*Rennet*
MAKHAN LAL.
1938 A.J.

directed to pay the
since it is more than the
agriculturists' Relief Act,
at liberty to take out
has been default at
does not say whether
otherwise—and that the
due would become the
part, JJ.) GURCHHAR
1938 A.L.J. 941 =
H.C.) 700 = 1938 R.D. 879 =
decrees passed prior to 1934.)

—Ss. 2 (10) (a) and 5—Any decree for money
in S. 5—Construction—If includes decree for recovery
of price paid and

Where a person obli-
for supply of goods ar-
tract to supply them,
tied to supply under S. 5 of the A. R. Act, for converting such a decree into one for
instalments. The amount paid by the plaintiff is not a

Act. The expression 'or in any order for grant of

that the provisions of S. 4 should
into operation where a decree,

U. P. AGRIC. REL. ACT (1934), S. 5.

the Act is converted into a decree or order for

U. P. AGRIC. REL. ACT (1934), S. 5

S. 5 of the Agriculturists' Relief Act is meant to apply

was secured by mortgage and further the parties entered into an agreement whereby the cultivator agreed to sell his sugarcane so as to ensure that the lender would obtain repayment of the money advanced in him it was held that in effect the agreement to sell the sugarcane crop was security given to the lender for the money which he had advanced and

Hasan, J. RAGHURAJ SINGH v. LALA HARI KISHAN LAL. 173 I.C. 865 = 10 R.O. 231 =

1938 O.L.R. 143 = 1938 R.D. 405 (2) =

1938 O.A. 231 = 1938 A.W.R. (C.C.) 26 =

1938 O.W.N. 331 = A.I.R. 1938 Oudh 107.

—S. 5—Application under—Subsequent application of sale—Rejection—Appeal High Court to interfere in

under S. 5 of the Agriculturists' the judgment debtor applies stay of the sale in execution, the application for stay, no order. But the High Court

ter in the exercise of its revisional jurisdiction. (*Niamatullah and Allsop, J.J.*)

SHYAM LAL v. RAM GOPAL. I.L.R. 1938 All. 48 =

172 I.C. 784 = 1938 R.D. 87 = 1938 A.L.R. 39 =

and Raghpal Singh J.J. HAR PRASAD v. SEWA. I.L.R. 1938 All. 727 = 1938 A.W.R. (H.O.) 486 =

1938 O.W.N. 753 = 1938 R.D. 650 =

177 I.C.

1938 A

—S. 5—

U. P. AGRIC.

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—S. 5—

1938 A.L.R. 695 = 11 E.A. 160 =

1938 A.L.J. 684 = A.I.R. 1938 All. 461 (F.B.)

—S. 5 (1)—"Any decree for money"—Meaning of

—Interpretation of statutes—Plain meaning.

It is one of the recognized canons of interpretation of

held in pursuance of the original decree must be set aside (*Jasral, J.*) ZAMIN ALI v. PARSHOTAM CHANDRA. 1938 A.L.J. 575 = 1938 R.D. 588 =

1938 A.W.R. (H.O.) 407.

—S. 5—Discretion of Court.

The Court has discretion in certain cases not to apply

if, the judgment-
ulturists' Relief
on of the decree
the mortgage
ceases to exist.
a fresh decree
alone is capable
ter S. 5, the sale

decree for money" used if
passed with respect to a
cannot apply to a de
malicious prosecution.
Raghpal Singh J.J.)

I.L.R. 19

1938 O.W.N. 763 = 176 I.C. 913 = 1938 A.L.R. 690 =

11 E.A. 153 = 1938 A.L.J. 628 =

1938 A.W.R. (H.C.) 447 =

A.I.R. 1938 All. 456 (F.B.)

—S. 5—Applicability—Drive on compromise providing for its satisfaction by judgment-debtor executing sale-deed.

LAL. 1938 O.A. 231 = 1938 A.W.R. (C.C.) 26 =
173 I.C. 865 = 1938 O.L.R. 143 = 1938 R.D. 405 (2) =

10 R.O. 231 = 1938 O.W.N. 331 =

A.I.R. 1938 Oudh 107,

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LAL. 173 I.C. 865 = 1938 O.L.R. 143 =

1938 R.D. 405 (2) = 10 R.O. 231 = 1938 O.A. 231 =

1938 A.W.R. (C.C.) 26 = 1938 O.W.N. 331 =

A.I.R. 1938 Oudh 107.

—Ss. 5 and 30—Right to apply under—Hinda joint family—Individual member of—Application by—Competency. See U. P. AGRICULTURISTS' RELIEF

U. P. AGRI. REL. ACT (1934), S. 5.

ACT, S. 2 (2), EXPL. II.

1937 A.W.R. 890=
A.I.R. 1938 All. 12.S. 5—*Successive applications under—Maintainability.*

A second application under S. 5 of the Agriculturists' Relief Act asking the Court which has already passed an instalment decree to vary its own decree in income

DAR RUP SINGH. 172 I.C. 891=1931

1938 A.L.R. 75=10 B.A. 452=1937 A.

1937 A.W.R. 1035=A.I.R. 1

S. 5 (1)—*Court that passed decree—*

The interpretation of 'Court which passed' in S. 37, C. P. Code, cannot be put on the words 'the

instance that decided the suit may have been transferred and not the Court which may have passed either in appeal or in revision the ultimate decree in the cause

S. 5 (2)—*Order under—Power of High Court to revise*

Court. The provision in Cl. (2) of S. 5 that "the decision of the appellate Court shall be final" means no more than this that the order passed by the appellate

U. P. AGRI. REL. ACT (1934), S. 12.

(the Act lies to the District Court and not to the High Court. *Nasmatullah and Alsop, J.J.*) KEDAR NATH v.

SHIAM LAL I.L.R. 1938 All. 11=1938 R.D. 72=

172 I.C. 896=1938 A.L.R. 43 (2)=10 B.A. 432=

1937 A.W.R. 1079=1937 A.L.J. 1094=

A.I.R. 1938 All. 48.

S. 6—*S. 6 does not interfere with any substantive*

I.L.R. 1938 All. 697=177 I.C. 287=

1938 A.L.R. 734=11 B.A. 184=1938 M.D. 706=

1938 A.L.J. 724=A.I.R. 1938 All. 502.

S. 6—*'Decree' and "first application for execution—*

Meaning of.

the word 'decree' appearing in S. 6 applies both to

decree passed prior to the commencement of the Act and

after it and the words 'first application for execution'

occurring in the same section also apply to 'first applica-

tion for execution' made before or after the commence-

ment of the Act. *Barpai, J.J.*) KALYAN

1. 697=177 I.C. 287=

184=1938 R.D. 706=

15=1938 A.L.J. 724=

A.I.R. 1938 All. 502.

S. 7—*Applicability—Suit instituted prior to Act*

to which the Act applies

the Act applies

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PHASAD.

I.L.R. 153=

10 B.A. 487=1937 A.W.R. 1173=

1937 A.L.J. 1235=A.I.R. 1938 All. 63.

S. 7—*Intention and object of—Section of reference*

Small Causes being subordinate to the District Court, an appeal from the Court of Small Causes under S. 5 (2) of

Act—Provision for automatic total discharge with a period—Application under S. 12 after

U. P. AGRIC. REL. ACT (1934), S. 33.

Just—Deposit, if necessary—Redemption, if can be ordered.

Where an usufructuary mortgage executed prior to the passing of the Agriculturists Relief Act, provided for its automatic total discharge within a period, the mortgagee can apply under S. 12 of the Act, after the period fixed, for redemptions. No deposit need be made, if no balance is due. S. 12 is intended to be a residuary to S. 11 and to embrace all mortgages by an agriculturist not dealt with in S. 11. S. 27 of the Act makes the C. P. Code, applicable and hence O. 34, Rr. 7 & 9 would apply to the above case and when on taking an account the Court finds that nothing is due from the applicant, the Court will pass a decree for possession in his favour, and may award him any amount found due to him. (*Excess and Verma, J.J.*) IQAN HUSAIN v. SABHU SAUD RAM. 1933 A.W.R. (H.C.) 792-2. 1933 A.L.J. 1115-1933 B.D. 924.

—S. 23—*Appeal under Court-fee payable—Court Fees Act, Sch. I, Art. 1 and Sch. II, Art. 11—Ad valorem fee—If payable.*

An appeal under S. 23 of the Agriculturists Relief Act is not an appeal falling under Art. 11 of Sch. II of the Court Fees Act, but falls under Art. 1 of Sch. I, and therefore ad valorem Court-fee must be paid on the amount of the subject-matter in dispute. (*Niammalah and Jaisrip, J.J.*) ANAND GIR v. RAM NAZAR CHOUEE. I.L.R. (1937) All 919.

1937 B.D. 575-10 R.A. 456-1933 A.L.R. 70-173 I.C. 50-1937 A.L.J. 1175-1937 A.W.R. 932-1933 A.L.J. 1115-1933 B.D. 924.

—S. 23—*Scope—Order refusing instalments under S. 3—Appeal.*

The U. P. Agriculturists Relief Act does not provide for any appeal from a refusal to grant instalments under Sec. 3 of the Act. The appeal provision in Sec. 23 is only for Chapter III and not for Ch. II. (*Barnet, J.*) SURAJ NARAIN SINGH v. KEDAR PRASAD.

1937 A.L.J. 1845-1938 A.W.R. 23 (H.C.)-I.L.R. (1938) All 254-1933 B.D. 146-1933 A.L.R. 302-173 I.C. 923-10 R.A. 523-1933 A.L.J. 1115-1933 B.D. 924.

—Ss. 30 and 33 (1)—*Applicability to mortgages—Usufructuary mortgage—Right of mortgagee to apply for account.*

S. 33 (1) is applicable even to a mortgagee who has executed a usufructuary mortgage. The section applies to every agriculturist debtor, no matter whether the debt is due by him under a promissory note, simple bond or mortgage deed, whether the mortgage be a simple, usufructuary or conditional mortgage. S. 30 does apply to mortgages. A mortgagee who has executed a usufructuary mortgage is therefore entitled to apply for an account under S. 33 (1). (*Swamin, C. J. and Harwar, J.*) DHARAM SINGH v. BISHAN SARKUP.

I.L.R. (1938) All 29-173 I.C. 676-1938 A.L.R. 151-10 R.A. 497-1937 A.W.R. 822-1937 B.D. 535-1933 A.L.J. 1115-1933 B.D. 924.

—S. 33—*Applicability—Enforced promissory note—Exemption of old debt, if permissible.*

The taking of renewed bill or promissory note for a debt does not amount to a payment of the old debt. S. 30 of the Agriculturists Relief Act is wide enough to cover the case of an old debt renewed subsequently. (*Thomas, C. J. and Zia-ul-Hussain, J.*) VIJAY S. RAJA BAKHANTH MARESH PRATAP NARAIN SINGH. 177 I.C. 552-11 R.O. 52-1938 O.L.R. 429-1938 O.W.N. 536-1938 B.D. 738-1938 A.L.J. 1115-1938 B.D. 924.

U. P. AGRIC. REL. ACT (1934), S. 30.

1933 A.W.R. (C.C.) 81-1933 O.A. 631-

—S. 30—*Application under—If competent, after an order under S. 6 of Encumbered Estates Act. See U. P. ENCUMBERED ESTATES ACT, S. 7 (a) and (b).* 1933 A.W.R. (H.C.) 324.

—S. 30 and Sch. III and S. 4—*Future interest on decrees prior to Act—Principle generally.*

Future interest on decrees passed before the passing of the Agriculturists Relief Act is governed by S. 30 and Sch. III of the Act and not by S. 4. (*Thomas, C. J. and Zia-ul-Hussain, J.*) DWARKA PRASAD v. MOHAMMAD TAQI HUSAIN. 175 I.C. 161-

1933 O.L.R. 271-1933 B.D. 534-1933 A.W.R. (C.C.) 64-11 R.O. 1-1933 O.A. 456-1933 O.W.N. 573-1933 A.L.J. 1115-1933 B.D. 924.

—Ss. 30 and 33—*Redemption of usufructuary mortgage—Consent as to no accounting—Dispute, if could be referred—Dispute, if can claim refund if excess of interest paid.*

Where a person applies under the Agriculturists Relief Act for the redemption of a usufructuary mortgage with a covenant that there would be no accounting and alleges that the entire amount has been paid off from out of the mortgage, the accounts could be reopened under S. 33 of the Act though it was a usufructuary mortgage. The opening words of S. 33 clearly imply that accounts can and must be reopened between the mortgagee and mortgagee in spite of the fact that they might have agreed that there shall be no accounting between them. But S. 33 (4) lays down that the debtor cannot claim refund of any part of the interest already paid. (*Mitra, J.*) SHED CHARAN LAL v. UGRAO SINGH. 178 I.C. 457-1938 A.L.R. 854-1938 A.W.R. (H.C.) 611-1933 A.L.J. 1115-1933 B.D. 794-1933 A.L.R. 1933 All 611.

—S. 30 (1)—*Construction and scope—"Loan"*

"Interest"—*Meaning of—Mortgage—Execution of fresh usufructuary mortgage with permission for amounts due under prior hypothecation bond—No fresh advance—If fresh advance of loan—Right of debtor to open.*

The words "loan" and "interest" occurring in S. 30 (1) of the Agriculturists Relief Act must be understood as having the meanings given to them by the definitions of those words in S. 2, and it is only the principal amount actually advanced that is the "loan", and anything paid over and above that is "interest" no matter what form or shape it may take. The renewal of a mortgage deed by the execution of a fresh mortgage deed for the amounts due under the prior deed, without any fresh advance of money cannot be regarded as a fresh advance of a loan in cash or kind. Even if the new transaction is by way of a promissory mortgage under which the mortgagee takes possession undertaking to set off the income against interest, if there is no fresh advance of money to the mortgagee, the transaction cannot be regarded as a fresh advance in kind by the mortgagee to the mortgagee. What the Court has to see is the actual amount advanced or lent and not what by some fiction might be imagined to have been indirectly advanced. The previous transaction cannot be deemed to have been closed by the execution of a fresh document, so as to preclude it from being reopened under the Act. (*Swamin, C. J. and Harwar, J.*) DHARAM SINGH v. BISHAN SARKUP. 1937 A.W.R. 822-

I.L.R. (1938) All 29-173 I.C. 676-10 R.A. 497-1938 A.L.R. 151-1937 B.D. 535-1938 A.L.J. 1115-1938 B.D. 924.

U. P. AGRIC. REL. ACT (1934), S. 30

—S. 30 (1)—Scope and effect of—Order for instalment can

date as may be fixed
Gazette in this behalf
rates are prescribed with
and these were thereunto
accordance with rates which might be notified by Government under S. 4, subject to the provisions of note (b), but when once an order for instalments is passed, it appears to be the intention of the Legislature that the maximum rates should be those given in the various notifications under S. 4 of the Act, being no longer subject to note (b) to Sch. III. The fact that S. 30 (1) of the Act provides that the rate of interest shall not be

—S.
been given
claim.

The wording in S. 30 of the Act and can have no reference to the date of the decree. The benefit of S. 30 (2) can be claimed

gator, if can apply under S. 31
interest—Res judicata.

Where in a mortgage suit the
the plea of the interest being extinguished
at the later stages and an *ex parte* decree

U. P. AGRIC. REL. ACT (1934), S. 33.

interference by the Board in revision when the decreeholder has not in any way been prejudiced. Though the order is not technically in accordance with S. 30 (2), will not be in—
Singh, J.J.)

338 R. 90 =
10 R.A. 452 =
W.R. 1035 =
A.I.R. 1938 All. 26

—S. 30 (4)—Applicability—Theka money to be paid by mortgagor lessee. See U. P. AGRICULTURISTS' RELIEF ACT, SS. 2 (6) AND 30 (4)

1938 O.A. 434

—S. 33—Appeal by for reduction of amount adjudicated by trial Court in suit under—Proper court—

amount ad-
S. 33 to be
fees should be
s or has not
33 (2), on the

1938 A.L.J. 708 = 1938 A.W.R. (H.C.) 443 =
A.I.R. 1938 All. 467.

elief Act. The
one Province
do the terri-
The mortgage

though the decree would not be in a suit under O. 34, C. II. Code. (Thomas, C.J. and Zia-Ul-Hasan, J.) RAM NARAIN v. CHANDRIKA PRASAD.

175 I.C. 50 = 1938 O.L.R. 259 =
1938 O.W.N. 535 = 1938 O.A. 4
10 R.O. 307 = 1938 A.W.R. (C.O.
1938 R.D. 567 = A.I.R. 1938

said that the order is without jurisdiction so as to justify

U. P. AGRIC. REL. ACT (1934), S. 33.

—S. 33—*Mortgage and lease back—Decision in suit by debtor under S. 33—If affects creditor's right to sue for lease money in Revenue Court.*

mortgagee-creditor may recover the lease money by suit in the Revenue Court in the usual course, nor would mere decrees obtained by him therein be money 'realised' for purposes of the *J. and Zia Ul-Hasan, J.* RAM P. RIKA, PRASAD. 175 I.C. 50 =

1938 O.W.N. 535 = 1938 O.A. 434 =
10 R.O. 307 = 1938 A.W.R. (C.G.) 54 =
1938 B.D. 567 = A.I.R. 1938 Oudh 156.

—S. 33—*Reopening of fully satisfied debts—Permissibility.*

The use of the expression 'debtor' in S. 33 of the Agriculturists' Relief Act indicates that the relation-

be reopened. As such a suit for the reopening of a closed transaction in respect of a bond is not permissible under S. 33 of the Act. (*Smart, J.*) SUNDER LAL v. KAUSHI RAM. 1938 A.L.J. 976 =
1938 A.W.R. (H.C.) 680 = 1938 B.D. 833

the time the loan was advanced suit for accounts under the Agriculturists' Relief Act. LAL v. KAUSHI RAM.

1938 A.W.R. (H.C.)

—S. 33—*Suit under—defendant, if entitled to costs*

A suit by a mortgagor-debtor under S. 33 of the U.P. Agriculturist Relief Act for accounts cannot be regarded as a suit coming under O. 34, C. P. Code, and as such the mortgagee-defendant is not entitled to costs and were

175 I.C. 50 = 1938 O.L.R. 259 =
1938 O.W.N. 535 = 1938 O.A. 434 =
10 R.O. 307 = 1938 A.W.R. (C.G.) 54 =
1938 B.D. 567 = A.I.R. 1938 Oudh 156.

—S. 33—*Suit under—Valuation—Jurisdiction.*

and the suit falls within the pecuniary jurisdiction of a Munsif's Court. The suit must therefore be instituted in that Court and not in the Court of the Civil Judge. (*Collister and Barpas, J.J.*) BRIJ BEHARI LAL v. GOFI NATH. 173 I.C. 913 = 1938 B.D. 102 =
1938 A.L.R. 200 = 10 E.A. 524 =
1937 A.W.R. 1171 = 1937 A.L.J. 1224 =
A.I.R. 1938 All. 76.

U. P. DISTRICT BOARDS ACT (1922), S. 34.

—S. 33 (1) and (2)—*Construction—Applicability to mortgages.*

Sub-S. (1) of S. 33 of the U. P. Agriculturists' Relief modified by Sub-S. 33 (2) that should be read subject to sub-S. (1) and not vice versa. There is nothing moreover, own the substantive describing the procedure, if anything, it

RIKA PRASAD.

175 I.C. 50 = 1938 L.R. 259 =

1938 O.W.N. 535 = 1938 O.A. 434 =
10 R.O. 307 = 1938 A.W.R. (C.G.) 54 =
1938 B.D. 567 = A.I.R. 1938 Oudh 156.

UNITED PROVINCES COURT OF WARDS

ACT (IV OF 1912)—*Collector in charge of Court of can make an acknowledgment on behalf of a*

actor in charge of the Court of Wards is the used agent of the wards for the purpose of making an acknowledgment under S. 19 of the Limitation Act. (*Bennett, A.C.J., Rachpal Singh and Ganga Nath, J.J.*) SHANKER LAL v. RANA LAL SINGH. I.L.R. (1938) All. 363 = 175 I.C. 556 =
10 E.A. 692 = 1938 A.L.R. 446 =

1938 O.W.N. 518 = 1938 A.W.R. (H.C.) 163 =
38 A.L.J. 252 = A.I.R. 1938 All. 217 (F.B.).

. 19 (3) Provision—*Scope and effect—Failure of to discharge full amount within two years of*

part of Deputy a debt, late on is not the in- partial payment is no discharge, and unless the full amount due is paid within the period of two years, the creditor is entitled to fall back on his original contract and enforce the terms thereof and recover the interest originally fixed. (*Sulaiman, C.J. and Harris, J.*) DEPUTY COMMISSIONER, PARTABGARH v. PURAN CHAND. 172 I.C. 681 = 1938 A.L.R. 40 (2) = 10 E.A. 431 =
1937 A.L.J. 977 = 1937 A.W.R. 860 =
A.I.R. 1938 All. 15.

—S. 55—*Applicability—Personal claim for damages in respect of a tort of the ward—Suit, if lies against Court of Wards—Ward, if a necessary party.*

Where a disqualified proprietor, received certain money as Honorary Assistant Collector and converted it to his own use, a suit for the recovery of such an amount is an action in tort and lies against the Court of Wards

for damages.
of Wards
in such a
MUZAFFAR.

8 I.C. 141 =
1938 A.W.R. (H.C.) 184 = 1938 A.L.J. 328 =
A.I.R. 1938 All. 305.

UNITED PROVINCES DISTRICT BOARDS

ACT (X OF 1922), S. 34—*Purchase by member of Board at auction—If acquires interest in a contract of, the Board—Offence under S. 169, I. P. Code, if contemplated by section.*

U. P. DISTRICT BOARDS ACT (1922), S. 71.

It is difficult to say that according to language of S. 34 of the United Provinces District Boards Act, by purchasing property at an auction sale, the property being that of the Board, a member would be acquiring an interest in a contract of the Board. If given a general interpretation, the words would mean that at any auction sale of the Board, no member can bid. S. 34 was never intended in S. 169, I P. Code, at all and it refers only to S. 168 (*Bennet, J.*) **SURAJ NARAIN CHAUBE = EMPEKOR**

I.L.B. (1938) All

11 R.

1938 A.L.R.

1938 A.W.R. (H.C.) 450
—S. 71—Dismissal of Secretary—Board's resolution as to, not carried by 2/3rd majority of dismissal—Secretary if gets a cause proceed against Board

Where a Secretary was dismissed in resolution of a District Board, which resolution was not carried by 2/3rd of the total number of members, as required by S. 71 of the U. P. District Boards Act, the dismissal is not a legal one and the failure to comply with the statutory requirements would furnish a cause of action to the Secretary to proceed against the Board. (*Harris and Kachhapal Singh, JJ.*) **PRABHULAL UPADHYA v. DISTRICT BOARD OF AGRA.**

I.L.B. (1938) All 252 = 175 I.C. 875 = 11 E.A.

1938 A.W.R. (H.C.) 223 =

—S. 71—Wrongful dismissal—Board—Malicious conduct of Chairman of Board—Liability for damages.

Where the wrongful dismissal of a Secretary to a District Board was by the resolution of the Board itself, it is to the Board that is liable for damages. Neither any individual member nor the chairman is liable for damages, even though they might have acted maliciously to bring about the dismissal. (*Harris and Kachhapal Singh, JJ.*) **PRABHU LAL UPADHYA v. DISTRICT BOARD OF AGRA.**

I.L.B. (1938) All 252 = 175 I.C. 875 = 11 E.A. 3 = 1938 A.L.R. 505 = 1938 A.W.R. (H.C.) 223 = A.I.R. 1938 All 276

UNITED PROVINCES DISTRICT BOARD MANUAL, Ch. III, B. 3—Failure to comply with—If can give a cause of action to a dismissed servant.

R. 3 of Ch. III of the U. P. District Board Manual, is

AGRA. I.L.B. (1938) All 252 = 175 I.C. 875 = 11 E.A. 3 = 1938 A.L.R. 505 =

1938 A.W.R. (H.C.) 223 = A.I.R. 1938 All 276

UNITED PROVINCES ENCUMBERED ESTATES ACT (XXV OF 1934)—Rules framed under—R. 6—Scope of.

The scheme of the Encumbered Estates Act and the language of R. 6 of the rules framed under the Act unmistakably lead to the conclusion that subject to certain limitations, the Civil Procedure Code has been made

U. P. ENCUM. EST. ACT (1934), S. 2.

the Act coming into force. Such persons cannot claim the protection of the Act, by a subsequent acquisition of landed property. (*Darling, S.M. and Bomford, J.M.*) **SANT LAL v. ALLAHABAD BANK, LTD., JHANSI**

1938 A.W.R. (B.R.) 146 = 1938 R.D. 288.

—Ss. 1 (2) and 7—Exception in S. 1 (2)—Meaning and effect of—If excludes application of S. 7 to certain areas.

The meaning of the exception laid down in sub-S. (2)

Estates Act is only are situated within ny benefit from the not, however, mean conferred by the Act upon the landlord, and the disabilities which it has

of S. 1 of the Act (*Mulla, J.*) **BRIJ BEHARI LAL v. UDAI NATH SHAH.**

I.L.B. (1938) All 851 =

178 I.C. 187 = 1938 R.D. 768 = 1938 A.L.R. 825 =

1938 A.L.J. 832 = 1938 A.W.R. (H.C.) 681 =

A.I.R. 1938 All 688.

—S. 2 (g)—Definition of landlord—Interpretation

—Reference to other Acts—If necessary.

The definition of landlord in the Encumbered Estates Act is perfectly clear and unambiguous. There is, other Act to assist in (*Darling, S.M. and NATH KAUL v.*

—MULLA, NATH KAUL v. NATH KAUL.

1938 O.W.N. 35 = 1938 R.D. 41 =

1938 A.W.R. (B.R.) 24.

—S. 2 (g)—Landlord—Holder of Muafi land in Lucknow city, not assessed to local rate—If can apply under the Act.

Where in respect of a miscellaneous Muafi plot, situated in the city of Lucknow, no khewat was prepared, and which was not assessed to any local rate, the holder of such a plot is not a landlord within the meaning of S. 2 (g) of the U. P. Encumbered Estates Act, and as such cannot apply under the Act. (*Darling, S.M. and Mehta, J.M.*) **MOHAMMAD QASIM ALI v. DURGA PRASAD.** 1938 R.D. 861 = 1938 O.W.N. 1119

—S. 2 (g)—Landlord—Person whose name is not in the khewat, if a landlord. See U. P. ENCUMBERED ESTATES ACT, S. 2 (g), 1938 A.L.J. (Supp.) 8.

d—Qualification—Requisites.

(g) of S. 2 of the Encumbered

qualification for a landlord is

um is assessed to a local rate

which shall not be less than Re. 1 and it is wrong to think that the qualification is the payment of 1 Re. as local rate. (*Darling, S.M. and Bomford, J.M.*) **RAM SARUP v. SANT BUX SINGH.**

1938 A.W.R. (B.R.) 176 = 1938 R.D. 334.

—Ss. 2 (g) and 4—Landlord—Joint Hindu coparcenary paying more than one rupee cess in the under-proprietary khewat—Such co-sharers, if can jointly apply under S. 4

Where in an under-proprietary khewat, a co-parce-

subsequent to Act coming into force—If can claim benefits.

The Encumbered Estates Act was not passed for the benefit of those who were not landlords on the date of

than a rupee. (*Darling, S.M. and Mehta, J.M.*) **MAHPAL SINGH v. RAMESHWAR SINGH.**

1938 O.W.N. 1122 = 1938 A.W.R. (B.R.) 40
1938 R.D.

U. P. ENCUM. EST. ACT (1934), S. 4.

—S. 4—Amendment of applicant—*nice of member disclosed, but he not later on sign.*

The Board can allow a member family, whose existence had been in applicant but who h. applicant, *Mehra, J.*

1938 O.W.N. 121:

—S. 4—Amendment—Applicant founder of necessary parties—Concealment of existence of persons to be joined and specific assertion of non-existence of those persons—Amendment to add those persons—Permissibility. See C. P. C. 1908, s. 17.

1938 B.D. 137—1938 A.

—S. 4—Amendment after allowed.

An applicant under S. 4 of the U Estates Act could be allowed to amend only where there was a genuine ship and there was an offer to correct it at the earliest opportunity. Where the existence of minor sons was not disclosed he was permitted to amend the application by their inclusion. (*Darling, S. M. and Bomford, J. M.*) GIRWAR v. DANKU. 1938 A.W.R. (B.R.) 168—1938 B.D. 552.

—S. 4—Amendment—Powers of special Judge to cause amendment in application under S. 4.

Where an applicant under S. 4 of the U Estates Act could be allowed to amend only where there was a genuine ship and there was an offer to correct it at the earliest opportunity. Where the existence of minor sons was not disclosed he was permitted to amend the application by their inclusion. (*Darling, S. M. and Bomford, J. M.*) GIRWAR v. DANKU. 1938 A.W.R. (B.R.) 168—1938 B.D. 552.

an amendment is the collector, who must be moved in

U. P. ENCUM. EST. ACT (1934), S. 4.

wrongly describes his wife as a member of the joint family. (*Darling, S. M. and Bomford, J. M.*) JAGMOHAN NATH KAUL v. TARUNENDRA SHEKHAR

1938 B.D. 196—1938 A.W.R. (B.R.) 123.

—S. 4—Application by Karta of joint Hindu family—If recognized—Omission to join others—If fatal.

The Karta character of a Hindu elder member of the family has not been recognized in the Encumbered

property of the applicant provided that the sale has not been confirmed. (*Darling, S. M. and Bomford, J. M.*) KAILASH BEHARI LAL v. MOSTIDA KHAN. 1938 B.D. 196—1938 A.W.R. (B.R.) 123. —S. 4—Application by Karta of joint Hindu family—If recognized—Omission to join others—If fatal. The Karta character of a Hindu elder member of the family has not been recognized in the Encumbered

(*Mehra, J. M.*) DURGA BUX SINGH v. DURGA BUX 1938 A.W.R. (B.R.) 371. members of joint Hindu family as guardians of after limitation—If can

S. 4 of the Act, who family, omit to sign the in minor sons but bring the Court at the earliest expiry of limitation, and their application by the sons, whose existence is no reason why S. 6, R. 17, C. P. cannot be allowed in Act. (*Darling, S. M. and Bomford, J. M.*) Y BEHARI LAL v. 1937 B.D. 590.

to special Judge—hat application not duty made—Jurisdiction to hear and determine—Duty of Collector.

II an application under the Encumbered Estates Act,

the Board's powers of revision under S. 46. (*Darling, S. M. and Mehra, J. M.*) PARTAP v. RANJIT. 1938 B.D. 741—1938 A.W.R. (B.R.) 362—

—Ss. 46 and 47 in which as to examine Judge—Le.

Where a Estates Act which he close till a zamindar cant had 6 had no qua make a sec

U. P. ENCUM. EST. ACT (1934), S. 4.

Dismissal—Special Judge, if can restore for sufficient cause.

restore it on sufficient cause being shown. (*J.*)

RAM SWARUP v. DEVI DAS

1938 A.W.R. (H.C.) 707=1938 A.L.J.

1938 R.D. 867.

—Ss 4 and 13—Application under S. 4 and order under S. 6—Written statement after period allowed—Order declaring debt discharged under S. 13—Creditor, if can thereafter object to validity of original application.

Where an application is filed under S. 4 of the U. P. Encumbered Estates Act and an order had been made under S. 6, and a creditor files his written statement beyond the period allowed by the law and the special Judge ordered that the debt should be deemed to have been discharged according to S. 13 of the Act, then such a creditor has no *locus standi* to object before the Collector that the original application under S. 4 of the Act is not a valid one. (*Darling, S.M. and Mehta, J.V.*) BHAWANI SINGH v. DHOOM SINGH

1938 R.D. 732=1938 A.W.R. (B.R.) 368.

the date when the United Provinces Encumbered Estates Act came into force, cannot on the strength of a subsequent acquisition of property in that district, make an

Where the special Judge under Cl (7) of S. 14 of the Act and it has been transmi-

late a stage to allow objections as to the original applications to be entertained. (*Darling, S.M.*) TRI SINGH v. KANHYA LAL.

1938 A.W.R. (B.R.) 204=1938 R.D. 650 (1).

—S 4—Application under—When could be made—

U. P. ENCUM. EST. ACT (1934), S. 4.

passed under S 6, on an objection by a creditor that some of the heirs had not been mentioned, the applicants

—S. 4—Application under—Failure to include all members—Effect

The failure to make any mention of the existence of other members of the joint Hindu family renders the application by some only of the members under S. 4 of the Encumbered Estates Act invalid. (*Darling, S.M. and Bomford, J.M.*) PHOOL SINGH v. HARKESH.

1938 A.L.J. (Supp.) 21=1938 R.D. 404=

1938 A.W.R. (B.R.) 169 (1).

—S. 4—Application under—Failure of member of joint Hindu family to disclose existence of son's sons—If could be remedied.

Where the applicants under S. 4 of the Encumbered Estates Act being members of a joint Hindu family, specifically stated in their application, that there were no other members, but it was subsequently found that

is made addition of defect is a S.M. and SINGH. B.D. 352.

—S. 4—Application under—Form—Absence of signature—Vakalatnama also unsigned—Defect, if curable by amendment.

Bomford, J.M.) RAMA SHANKAR v. SHYAM LAL. 1938 R.D. 365=1938 A.W.R. (B.R.) 214.

—S. 4—Application under—Specification of all properties on which claim is based—Necessity—Omission—Effect.

U. P. ENCUM. EST. ACT (1934), S. 4.

tion.

Where an application under S. 4 of the Provinces Encumbered Estates Act is made only of the members of a joint Hindu family transferred to the special Judge under S. 6, jurisdiction to allow an amendment of the application to amend made long after the period of limitation and without giving any reason for the omission to join all the members, cannot be allowed. (*Darling, S. M. and Mehta, J. M.*) *BRIJ BAHADUR SINGH v. MAHABIR SINGH*, 1938 B. D. 888 = 1938 O. W. N. 1142.

—S. 4—Defective application under—Amendment—Stage—Applicant aware of defect—If entitled to ask for amendment after expiry of period of limitation.

Where an applicant under S. 4 of the Encumbered Estates Act had ample warnings of the defects in his application and knew full well that it was defective well within time to allow him for amendment, seeks to apply for amendment after the period of limitation had expired, it should not be allowed at that stage. (*Darling, S. M. and Bomford, J. M.*) *KEDAR NATH v. BAL KRISHNA*, 1938 A. W. R. (B. E.) 138 = 1938 E. D. 268.

—Ss. 4, 11 and S. 4—Order under S. 4 for correction of mistake under S. 6 in revision—Where an applicant

Encumbered Estates Act, mandatory provisions of the second proviso to that section, but nevertheless an order had been passed under S. 6, and the defect is discovered too late for correction, the Board in the exercise of its revisional powers under S. 46 could cancel the order inadvertently passed under S. 6. (*Darling, S. M. and Mehta, J. M.*) *KARORI MAL v. RATI RAM*, 1938 E. D. 736 = 1938 A. W. R. (B. E.) 369.

1938 A. W. R. (B. E.) 367 = 1938 E. D. 804 (1) = 1938 A. L. J. (Supp.) 122 = 1938 O. W. N. 1113

—S. 4—Groundholder paying no revenue or cess—Right to apply under

v. CHANDI LAL

1938 A. W. R. (B. E.) 127.

—Ss. 4 and 9—Issue of notice under S. 9—Creditor's objection as to non-disclosure of existence of sons—Application, if to be rejected.

Where a creditor, after the issue of notice under S. 9 of the U. P. Encumbered Estates Act, raises an objection that the non disclosure of the existence of sons of one of the applicants, which is not denied, the order inadvertently passed under S. 6 should be cancelled and the application rejected. (*Darling, S. M. and Bomford*

U. P. ENCUM. EST. ACT (1934), S. 4.

J. M.) *HAR MOHAN SINGH v. HARBAKHSH*.

1938 B. D. 428.

—S. 4—Joint application—One of applicants not a landlord—Liability joint with others—Joint applica-

S. M. and Bomford, J. M.) *ILTI FAT AHAMAD v. FARID UDDIN AHAMAD*, 1938 B. D. 447 = 1938 A. W. R. (B. E.) 317 = 1938 A. L. J. (Supp.) 105.

—S. 4—Manager of wakf property—Right to apply under—"Landlord".

The manager of a wakf property whose name is entered in the khewat as such is the landlord for purposes of S. 2 (g); such a manager is entitled to seek the protection of the Act on behalf of the property and is therefore competent to apply under S. 4. (*Darling, S. M. and Bomford, J. M.*) *SHIV CHARAN JAITLEY v. MAHOMED RAZA KHAN*, 1938 E. D. 201 = 1938 A. W. R. (B. E.) 128.

—S. 4—Misdescription in application under—Sarbkarar of idol, bona fide applying in personal capacity—Disclosure within limitation—Application, if can be amended.

under S. 4 of the U. P. Sarbkarar of an idol, but the misdescription applicant himself well mala fides the clerical ring, *S. M. and Mehta*,

J. M.) *MANI RAM v. JATI HAR PRASAD*, 1938 O. W. N. 1069 = 1938 E. D. 819.

—S. 4—Mutawalli—Right of to apply under

The mutawalli of a mahal is entitled to apply under the Encumbered Estates Act. (*Darling, S. M. and Bomford, J. M.*) *KAILASH BEHARI LAL v. MOHTIDA KHAN*, 1938 B. D. 196 = 1938 A. W. R. (B. E.) 123.

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—S. 4—Objections to application under—If could be raised after passing of decree under S. 14.

It is much too late to find fault with an original application of the U. P. Encumbered Estates Act, of omission to join certain minor sons, decree has been passed under S. 14 of the U. P. Encumbered Estates Act. (*Darling, S. M. and Mehta, J. M.*) *JHABBU LAL SINGH*, 1938 E. D. 841 = 1938 O. W. N. 1114.

—S. 4—Omission to include sons—Objection after issue of notice under S. 9—Order to be passed.

Where after the issue of notice under S. 9 of the Encumbered Estates Act a creditor raises an objection that the existence of sons of the applicant are not disclosed, and it was admitted to be so, it was held that the application did not comply with the provisions of S. 4 of the Act and that the order inadvertently passed under S. 6 should be cancelled. (*Darling, S. M.*

U. P. ENCUM. EST. ACT (1934), S. 4.

and Bomford, J.M.) MOHAN SINGH v. HAR BAKSH SINGH.
1938 A.W.R. (B.R.) 276=
1938 B.D. 772(2).

—Ss. 4 and 6—Order transferring application to special officer—Subsequent order under Regulation of Sales Act—Effect.

No order under the U. P. Regulation of Sales Act

1938 A.W.R. (B.R.) 212=
1938 A.L.J. (Supp.) 71=1938 B.D. 678.

—Ss. 4 and 6—Applicant not at time of sale for cancellation

Khewats are only to be filed with it under S. 4 of the Encumbered Estates Act evidence that the applicant is a landlord in cases where the Khewats might be brought in conformity with the facts after the expiry of the Act with

tion was filed or when it was forwarded to the special Judge. (Darling, S. M. and Bomford, J. M.) RATULAN v. ADIT BAKSH.
1937 B.D. 482=
1937 A.W.R. 1032.

—S. 4—Persons entitled to protection of Act—Landlord—Meaning of.

tection of the Act managed to recover a portion just sufficient to bring him within the definition of a landlord (Darling, S. M. and Bomford, J. M.) BHOLA NATH v. ROSHAN.
1937 B.D. 358.

—S. 4—Right to apply—Landlord—Proof of—Applicant not recorded as landlord in Khewat—Entry in papers showing him as muasfidar, muasfi atia Zamindaran—Settlement parcha showing applicant as malikan adna—Value of

to show that he fact that it make him

U. P. ENCUM. EST. ACT (1934), S. 4.

It is only those who are landlords on the date on which the U. P. Encumbered Estates Act came into force, are entitled to the protection of the Act. Those becoming landlords subsequent to that date are not so entitled. Where a father transfers his entire property to his only son after the Act came into force, the son cannot be accepted as an heir as contemplated by the

Act, so long as the and Marsh, J.M.)
1938 B.D. 556=
A.W.R. (B.R.) 253.

—Applicant selling

his property, reserving a right to re purchase—Locus standi.

Where a zamindar has sold his property reserving

claim the Encumbered Act, J.M.)

1938 B.D. 354=1938 A.W.R. (B.R.) 195.
harers collected individually
NUMBERED
N.W.N. 1122.

—S. 4—Right to apply under—Landlord parting with his interest by sale—Separate agreement for re purchase.

The advantages given to landlords under the Encumbered Estates Act cannot be claimed by one who has divested himself of his liabilities as landlord by an out with a separate agreement about (Darling, S. M. and Bomford, J. M.) SINGH v. SHEO KATAN SINGH.
1938=1938 A.W.R. (B.R.) 129.

apply under—Under-proprietors transferring own of property by way of gift—Deed providing for right of donee to apply for mutation and to conduct and finance litigation under Encumbered Estates Act—Property retained by donors paying less than Re. 1 at local rate—Application by donors under S. 4 subsequent to transfer—Competency.

Certain under-proprietors transferred the bulk of their property to one B by a deed of gift, and the very next day they filed an application under S. 4 of the Encumbered Estates Act jointly with B. The property retained by the under-proprietors had a local rate of less than Re. 1. The deed of gift provided that the donee B was entitled to apply for mutation forthwith the litigation under the find the finance for the with performing his part,

that the deed of gift was not merely a local deed of gift, but was a transfer for consideration by which the under-proprietors parted with proprietary rights, and handed over to B all the

(Darling, S. M. and Bomford, J. M.) RAM SINGH SINGH v. BALRAM PANDE.
1938 B.D. 119=
1938 A.W.R. 75 (B.R.).

—S. 4—Right to apply—Persons becoming landlords after the Act had come into force—Gift of entire property to son—Son if can be accepted as heir.

Re. 1, they were not entitled to apply under S. 4. (Darling, S. M. and Bomford, J. M.) JANG BAHADUR SINGH v. MOTI SINGH.
1938 B.D. 83=
1938 A.W.R. (B.R.) 54.

—S. 4—Right to apply under—Undischarged insolvent.

U. P. ENCUM. EST. ACT (1934), S. 4.

An undi-
Encumbered
ford, J.M.)

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—S. 4
apply at the
cation by—

An appli-
apply under
not become
(Darling, J.M.)

v. NAGAR MAL.

1938 B.D. 118=
1938 A.W.R. (B.R.) 118=1938 O.A. 225=
If

—S. 4 (1) (b)—Application by
—Omission to give names and address
parents—Effect.

Where an applicant under S. 4 of the Encumbered Estates Act is a member of a Hindu joint family, it is incumbent on the applicant to give the names and addresses of the remaining members of his family who do not join him in his application and from whom he wishes to separate. Failure to do so is a fatal defect which cannot be remedied after a long lapse of time (Darling, S.M. and Bomford, J.M.) GANGA DHAR v. BABU LAL.

1938 B.D. 197=1938 O.A. 171=

1938 O.W.N. 784.

—S. 4 (1) (b) and rule 2 (3) of Rules framed under S. 54—Application under S. 4—Omission to give names of all the members of the joint Hindu family—

Act

Where a family, who do not join in the application, should be given. Hence the failure to disclose the presence of other members of a family, is a fatal flaw in the application. (Darling, S.M. and Bomford, J.M.) GANGA DHAR v. BABU LAL.

1938 A.W.R. (B.R.) 5=1938 B.D. 148.

U. P. ENCUM. EST. ACT (1934), S. 4.

to benefit of S. 4 (4).

The word "prevent" connotes some physical disability

than by application under the Act, and abstains from applying in the hope that his private negotiations would be fruitful and would render an application unnecessary cannot be said to be "prevented" from applying within the meaning of S. 4 (4) of the U. P. Encumbered Estates Act, so as to be entitled to the benefit of that clause. If he applies only when his hopes are finally disappointed, he cannot claim the benefit of S. 4 (4). (Darling, S.M. and Bomford, J.M.) SHEONANDAN PATHAK v. EMPEROR.

1937 B.D. 396=

1937 A.W.R. 868.

—S. 4 (4)—Delay in applying—Sufficient cause—Widow going on pilgrimage pending mutation proceedings on death of her husband—Application on return after limitation—Widow, if "prevented" from applying

been "prevented" within the meaning of S. 4 (4) of the Act from applying within the ordinary limitation. (Darling, S.M. and Bomford, J.M.) RATAN PRADIP KASH v. EMPEROR.

1938 B.D. 362=

1938 A.W.R. (B.R.) 198.

Estates Act came into force. (Darling, S.M. and Bomford, J.M.) BABOO RAN v. SUKH LAL.

1938 A.W.R. (B.R.) 270=

1938 B.D. 489=1938 A.L.J. (Supp) 93.

—S. 4 (4)—Applicability—Benefit under—Right to claim.

Where certain debtors pleaded that they thought their interests would be sufficiently protected by the application of their co-debtors and that they were misled in so thinking, that circumstance was held to be not such by which these debtors were "prevented" from presenting their application in time. (Darling, S.M. and

U. P. ENCUM. EST. ACT (1934), § 4.

Scmford, J.M.) BABOO RAM v. SUKH LAL.

of the Encumbered Estates Act, when the applicant gives no adequate reason to explain the delay beyond the plea that he was advanced in years and was continuously ill. It is the duty of the applicant to support his allegations by evidence. (*Darling, S.M. and Bomford, J.M.*) JAGAT SINGH v. KUNWAR SEN.

1937 E.D. 481=1937 A.W.E. 1034.

—S. 4, proviso 2—*Scope—If mandatory—Failure to disclose existence of sons living jointly with applicant—Amendment after period of limitation—If permissible.*

Proviso 2 to S. 4 of the Encumbered Estates Act is a mandatory provision. The omission on the part of an applicant to disclose the existence of sons living jointly with him, whether accidental or deliberate, is a most

—S. 4, proviso 2—*Scope—Mandatory.*

Proviso 2 to S. 4 of the Encumbered Estates Act is mandatory, and non-compliance with its terms is fatal. (*Darling, S.M. and Bomford, J.M.*) GUR DIN LAL v. SHEODARAN SINGH.

1938 E.D. 112=

1938 A.W.E. (B.E.) 64.

—Ss. 6 and 4—*Application under S. 4—Applicant, if a landlord—Test—Decision—F. Revenue Court—Duty of Collector to come finding—S. 2 (g).*

The Revenue Courts will not ordinarily enter in the khewat for the purpose of deciding whether an applicant under S. 4 of the Encumbered Estates Act is a landlord within the meaning of Cl. (g) of S. 2 of the Act. So long as his name is not in the khewat, he is not a landlord. (*Darling, S.M. and Bomford, J.M.*) The Collector is to decide as to whether the applicant is a landlord and should not be a tenant. (*Bomford, J.M.*)

1938 A.L.J. (Supp.) 5=1938 A.W.E. (B.E.) 95=1938 E.D. 337

—S. 6—*Collector's power to review.*

Once an order has been made under the Encumbered Estates Act and the application for the special Judge, the Collector has no power to set aside the order on the ground of error of law. The Board of Revenue alone is entitled to interfere in revision. (*Darling, S.M. and Bomford, J.M.*) AMJAD HUSAIN v. CHUNNI LAL.

1938 E.D. 202 (1)=

1938 A.W.E. (B.E.) 127.

—Ss. 6 and 7 (1) (a)—*Effect of order under S. 6—Failure to appeal against order directing continuance of execution—If can validate subsequent proceedings.*

As soon as an order under S. 6 of the Encumbered Estates Act has been passed, then under S. 7 (1) (a) of the Act, all the execution proceedings shall become null and void from the date of the order. The fact that an order directing continuance of execution proceedings was not appealed against, cannot possibly validate such proceedings. (*Darling, S.M. and Bomford, J.M.*)

Y. D. 1938—86

U. P. ENCUM. EST. ACT (1934), § 6

ceedings. (*Darling, S.M. and Mehta, J.M.*) SHEO SHANKAR v. PANCHAITI AKHARA 1938 E.D. 751=1938 A.W.E. (B.E.) 359 (1).

—Ss. 6 and 7—*Effect of order under S. 6—Nature of proceedings to be stayed under.*

As soon as an order is passed under S. 6 of the Encumbered Estates Act, the Court is bound to take action under S. 7 of the Act, and stay all proceedings in respect of a debt with which the applicant's property is encumbered. This has to be done even though some property which has been purchased by another person is also encumbered by that debt. (*Bennet and Varma, J.J.*) RAGHUBAR DAYAL v. ANBA PRASAD

I.L.R. 1938 All. 670=1938 A.L.J. 576=

1938 E.D. 589=176 I.C. 401=11 R.A. 92=

1938 A.L.R. 609=1938 A.W.E. (H.C.) 330=

A.I.R. 1938 All. 390.

—S. 6—*Objection by some creditors that applicants are not landlords—Applicant, if can demand addition of all creditors to enquiry—Willingness to pay costs.*

Where on an application under S. 4 of the Encumbered Estates Act some of the creditors raised the objection that the applicants were not landlords, and the creditors should be added to the enquiry, the order may be made that the costs of the creditors should not be met. (*Jai Dai Kun, J.*) JAI DAI KUN v. JAI DAI KUN 1938 E.D. 357=

1938 A.W.E. (B.E.) 196 (1).

—S. 6—*Objection by some of the creditors to order under S. 6—Debtors entitled to demand impleading of other creditors—Condition as to costs.*

Where some of the creditors object to the passing of an order under S. 6 of the Encumbered Estates Act and the debtor wishes to have impleaded all the other creditors, the order may be made that the costs of the creditors should not be met. (*Darling, S.M. and Bomford, J.M.*) NATH v. NATH 1938 E.D. 343=

1938 A.W.E. (B.E.) 196 (2).

—S. 6—*Order under S. 6—Cancellation—Assistant Collector—Jurisdiction of.*

An Assistant Collector has no jurisdiction to cancel an order passed under S. 6 of the Encumbered Estates Act. (*Darling, S.M. and Bomford, J.M.*)

—Ss. 6 and 46—*Order under S. 6—Cancellation by S. D. O.—Legality—Proper procedure.*

When an order is passed under S. 6 of the Encumbered Estates Act, it is only the Board that could cancel such an order. (*Darling, S.M. and Bomford, J.M.*) RANA SHANKAR v. SHYAM LAL.

1938 E.D. 365=1938 A.W.E. (B.E.) 214.

—Ss. 6 and 46—*Order under S. 6—Considered wrong—Procedure to be followed.*

The S. D. O. has no authority to cancel an order once passed under S. 6 of the U.P. Encumbered Estates Act, passed by mistake, had the order been recorded to the Board. (*Darling, S.M. and Bomford, J.M.*)

—S. 6—*Order under S. 6—Cancellation—If the Board only can.*

When once an order under S. 6 of the Encumbered Estates Act is passed, it is only the Board that could cancel such an order. (*Darling, S.M. and Bomford, J.M.*) RANA SHANKAR v. SHYAM LAL.

1938 E.D. 365=1938 A.W.E. (B.E.) 214.

—Ss. 6 and 46—*Order under S. 6—Considered wrong—Procedure to be followed.*

The S. D. O. has no authority to cancel an order once passed under S. 6 of the U.P. Encumbered Estates Act, passed by mistake, had the order been recorded to the Board. (*Darling, S.M. and Bomford, J.M.*)

—S. 6—*Order under S. 6—Cancellation—If the Board only can.*

When once an order under S. 6 of the Encumbered Estates Act is passed, it is only the Board that could cancel such an order. (*Darling, S.M. and Bomford, J.M.*) RANA SHANKAR v. SHYAM LAL.

U. P. ENCUM. EST. ACT (1934), S. 6.

Act. He should, if he finds that a mistake has been made, submit the case to the Board in revision under S. 46, with his recommendation. (*Darling, S.M. and Bomford, J.M.*)
AHAMAD, 1938 B.

—S. 6—Order

realisation of compensation in partition case. See U. P. ENCUMBERED ESTATES ACT, SS. 7 AND 6.

1938 B.D. 319.

—S. 6—Order under—Mistake—Duty of Collector.

If a mistake had been made in passing an order under S. 6 of Encumbered Estates Act should refer the case to the Board for S. 46 of the Act and not cancel the passed. (*Darling, S.M. and Bomford, J.M.*) SANT LAL v. ALLAHABAD BANK, LTD., JHANSI.
1938 A.W.R. (B.R.) 146=1938 B.D. 288.

—S. 6—Order under—Mistake in—Objection by

creditor subsequently—Refusal to take cognisance by Sub-Divisional Officer—Properly—Proper course.

If it is found by a Sub-Divisional Officer that a mistake

has been made in the order passed under S. 6 of the Act, it is the duty of the Sub-Divisional Officer to refer the case to the Board for S. 46 of the Act and not to cancel the order passed. (*Darling, S.M. and Bomford, J.M.*) SANT LAL v. ALLAHABAD BANK, LTD., JHANSI.
1938 A.W.R. (B.R.) 126=1938 B.D. 201.

—S. 6—Order under—Objections subsequently filed

by creditor—Duty of Collector—Objecting creditor—If can be referred to special Judge.

It is only the Revenue authorities that can decide

whether the objection is valid or not. If the objection is valid, the Collector should refer the case to the Board for S. 46 of the Act, and not cancel the order passed. (*Darling, S.M. and Bomford, J.M.*) BHOLA NATH v. KOSHAN.
1937 B.D. 558.

—S. 6—Order under—Power of Sub-Divisional

Officer to cancel his own order.

If a Sub-Divisional Officer has passed an order under S. 6 of the Act, and subsequently finds that a mistake has been made, he should refer the case to the Board for S. 46 of the Act, and not cancel the order passed. (*Darling, S.M. and Bomford, J.M.*) BHOLA NATH v. KOSHAN.
1937 B.D. 571.

—S. 6—Order under—Setting aside—Procedure—

Sub-Divisional Officer, if can cancel predecessor's order.

The Sub-Divisional Officer has no authority to cancel the order passed by his predecessor under S. 6 of the Encumbered Estates Act. If, for any reason, he comes

U. P. ENCUM. EST. ACT (1934), S. 6.

to the conclusion that, it is erroneous or made by mistake, he should submit the record to the Board with a recommendation. The Board in its exercise of revisional

46 pass suitable orders. (*Darling, S.M.*) ALAUDDIN KHAN v. NARAIN
S.E.D. 544=1938 A.W.R. (B.R.) 246.

—S. 6—Power of review—Power of Deputy Com-

missioner to cancel order—Proper procedure.

The Deputy Commissioner who has passed an order under S. 6 of the United Provinces Encumbered Estates Act has no jurisdiction to cancel an order passed under S. 6 if he thinks that a mistake has been made in

the order passed. He should refer the case to the Board for S. 46 of the Act, and not cancel the order passed. (*Darling, S.M. and Bomford, J.M.*) GUR DIN LAL v. SHEOBARAN SINGH.
1938 B.D. 112=

1938 A.W.R. (B.R.) 64.

—S. 6—Power of Court—Application by creditor

for review—Competency when he was no party to order.

S. 6 of the U. P. Encumbered Estates Act does not empower a creditor to apply for a review of an order passed under S. 6 of the Act. But the only ground on which a review is the order is that it is rejected for wrong

all a party before the

Court when it passed the order in question has no

locus standi to apply for a review. (*Darling, S.M. and Bomford, J.M.*) RAM BUX SINGH v. RAM PRASAD.
1937 A.W.R. 1176=1938 B.D. 17.

—S. 6—Review—Power to review order under—

Sub-Divisional Officer who has passed

United Provinces Encumbered Estates Act, does not

review that order subsequent to the application under S. 4

proper procedure, if he

is to submit the case

46. (*Darling, S.M.*)

ADP. PARNESHWARI

1938 B.D. 137=1938 A.W.R. (B.R.) 44.

—S. 6—Right to apply under S. 4—Challenging

of—Procedure—Technical point—Strict compliance of

rules of procedure—Necessity—Extension of time, if

can be granted—Applicability of S. 151, C. P. Code.

When the point taken by the person who wishes to

deprive the debtor of the benefits which the Encumbered

Estates Act is intended to confer, is a purely

technical one, he must be made to conform strictly to

the procedure prescribed. Though the usual procedure

is to file a review of the order of transfer under S. 6 of

the Act, it is not necessary to do so if the person

can show that the order is void. (*Darling, S.M. and Bomford, J.M.*) RAMA SHANKAR v. SHYAM LAL.
1938 B.D. 365=1938 A.W.R. (B.R.) 214.

—Ss. 6 and 7—Sale after order under S. 6—Set-

ting aside of—Board subsequently setting aside order

under S. 6—Effect.

If a Sub-Divisional Officer has passed an order under S. 6 of the Act, and subsequently finds that a mistake has been made, he should refer the case to the Board for S. 46 of the Act, and not cancel the order passed. (*Darling, S.M. and Bomford, J.M.*) RAMA SHANKAR v. SHYAM LAL.
1938 B.D. 365=1938 A.W.R. (B.R.) 214.

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ting aside of—Board subsequently setting aside order

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ting aside of—Board subsequently setting aside order

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1938 B.D. 365=1938 A.W.R. (B.R.) 214.

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ting aside of—Board subsequently setting aside order

under S. 6—Effect.

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1938 B.D. 365=1938 A.W.R. (B.R.) 214.

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ting aside of—Board subsequently setting aside order

under S. 6—Effect.

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1938 B.D. 365=1938 A.W.R. (B.R.) 214.

—Ss. 6 and 7—Sale after order under S. 6—Set-

ting aside of—Board subsequently setting aside order

under S. 6—Effect.

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Where a sale in execution was held, but prior to which an application under S. 4 of the Encumbered Estates Act and an order under S. 6 of the Act had been passed, and as a result the sale was set aside, the fact that subsequent to the setting aside of the sale, the Board had cancelled the order under S. 6, could not affect the question as to validity of the order setting aside the sale. (*Mulla, f*) **BULAQI DASS v. GHULAB CHAND.**

1938 A.W.R. (H.C.) 705=1938 A.L.J. 1061=1938 B.D. 865.

—S. 6—Sale in execution of decree for arrears of land revenue—Subsequent order under S. 6 in favour of judgment-debtor—Effect—Procedure to be followed.

Where a sale has been held in execution of a decree for arrears of land revenue and where subsequently the judgment debtor obtains an order under S. 6 of the Encumbered Estates Act, the sale cannot be upheld, but the execution proceedings should be kept open pending disposal of the application under Act. (*Darling, S.M. and Bomford, J.M*) **ABDUL SHAKOOR v. ABDUL KAREEM** 1938 B.D. 348=1938 A.W.R. (B.R.) 184.

—Ss. 6 and 7—Scope—Applicable to proceedings under Regulation

Once an application under the Act has been sent to the Judge, the Regulation of Sales Act which are pending are automatically stayed. (*Darling S.M. and Bomford, J. M.*) **BHARATH PRASAD v. LACHHMAN PRASAD.** 1937 B.D.

—Ss. 6 and 7—Scope—Power to question legality of order under S. 6—Effect of.

Collector's order forwarding the application proof of the fact that the applicant is benefit of S. 7. The special Judge has the applicant is entitled to the benefits of proceed upon that assumption (*Niamatullah and Mahomed Ismail, J.J.*) **BRAHMA NAND v. SHIAM LALA.** 1938 A.L.R.

11
—S. 7

Provinces
The United only a local ass. The United only a local ass. profess to apply to any Court other than a Civil or Revenue Court in the United Provinces. Consequently the jurisdiction of a Court passing a decree outside the Province to appoint a receiver in execution fettered by a decision of a Court declaring the execution proceedings null and void under S. 7 of the Act. (*McNair, J.*) **A. v. OJHA AUTOMOBILE ENGINEERING** L.L.R. (1938) 11 Cal 541=42 C.W.N. 940.

—S. 7—Applicability—Proceedings for restitution

—If any party of a d restitution can therefore be stayed under S. 7 of the Encumbered Estates Act, if the application for stay is a

U. P. ENCUM. EST. ACT (1934), S. 7

genuine application and not intended to defeat the particular debt alone. (*Darling, S. M. and Bomford, J.M*) **RAM ADHAR PATHAK v. INDRADEO SINGH** 1937 B.D. 444=1937 A.W.R. 1029.

—S. 7—Application for stay under—Forum.

An application for stay of proceedings under S. 7 of the U. P. Encumbered Estates Act must be made not to the special Judge, but to the Court in which those proceedings are pending which it is sought to be stayed, for, the first point to be decided in such an application is whether the proceedings in question are of such a nature as to be affected by S. 7 of the Act and it is the Court where those proceedings are pending who knows the exact nature of the proceedings and who can therefore come to a decision whether they should be stayed or not. (*Hamilton, J.*) **PURANDHER SINGH v. RAJ BISHNATH SARAN SINGH** 1938 O.A. 586=1938 B.D. 719=1938 A.W.R. (C.O.) 69=1938 C.W.N. 750.

—S. 7—Applicability—Suit under S. 53 of the Transfer of Property Act—If a suit in respect of a

proceedings in respect of any public or private debt includes all proceedings which can have any ultimate bearing not merely on any public or private debt but on

83=1938 A.W.R. (C.O.) 68=1938 B.D. 686=1938 O.L.R. 350=1938 A.I.R. 1938 Oudh 192.

ty—Transfer to decree-holder of Sales Act—Execution and subsequent order under S. 6 of —Proceedings for formal possession can be stayed.

transferred in a of Sales Act not registered, Estates Act is passed, proceedings in connection with an application by the decree holder for formal possession, cannot be

—Ss. 7 and 6—Compensation payable in partition case—Recovery of—If stayed by operation of S. 7.

The claim in respect of a liability to pay compensa-

and have to remain so stayed so long as that provision remains operative. (*Darling, S.M. and Bomford,*

There is no reason why property which a partner of firm owns should not be taken in execution by

U. P. ENCUM. EST. ACT (1934), S. 7.

creditors of the firm merely because another partner of that firm has sought the protection of Provinces Encumbered Estates Act. (*Mc A. MILTON AND CO. v. OJHA AUTOMOBILE REERING CO.* I.L.B. (1938) 42 O.W.N. 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)

the word 'debt' in S. 7 connotes a contract. On the other hand S. 2 (a) lays down that 'debt' includes any pecuniary liability except a liability for unliquidated damages. The words 'any pecuniary liability' are wide enough to include not only costs payable under a decree, but also mesne profits awarded. Those profits cannot be 'unliquidated damages' as their amount is ascertained by Court. (*Thomas, C. J. and J.*)

debted landlord in a Province other than the United Provinces, a special Judge in the United Provinces is not competent to issue an injunction indefinitely restraining such a creditor from executing his decree against property of the debtor in that Province. The United Provinces Encumbered Estates Act is concerned exclusively with the protection of land in the United Provinces. The words of S. 13 of the Act are certainly very wide but it is doubtful whether under the Act a Court in the United Provinces has power to declare that a decree obtained in another Province by a creditor who has not had recourse to the special Judge, is discharged

n. 1—Execution process—If includes sale in execution of a decree.

An order passed by a Court executing a decree, for sale, which is carried out by a ministerial officer,

the Encumbered Estates Act, any creditor feeling aggrieved by such an order should go before the Board by way of revision under para. 101-A of Manual and not by way of appeal under Act. (*Darling, S. M. and Marsh, J.*)

SINGH v. NARAIN DAS, 1938 A.W.B.,

U. P. ENCUM. EST. ACT (1934), S. 7.

for the appointment of a receiver is only a process for

S. 7—Proceedings in execution in Court not situated in U. P.—If can be stayed—C. P. Code, O. 39, R. 7.

There is no provision in the United Provinces Encumbered Estates Act for stay of execution proceedings against the property of the applicant in a Court not situated in the United Provinces. Nor can such an order be passed under O. 39, R. 7, C. P. Code. An order staying sale of property in execution of a decree is not an order for 'preservation' of that property. Moreover, under O. 39, R. 7 (1) the property sought to be

S. 7—When comes into operation. See U. P. REGULATION OF SALES ACT, S. 5. 1938 B.D. 265.

S. 7 (1) (a)—Application under—Proper Court.

The appropriate Court to which an application for stay under S. 7 (1) (a) of the Encumbered Estates Act is the Court which is executing the decree and in which the execution proceedings are pending. (*Sulaiman, C. J. and Harries, J.*)

HABU RAM v. MANOHAR LAL, I.L.B. 1938 All. 22=173 I.C. 167=1938 A.L.R. 98=10 R.A. 466=1938 R.D. 64=1937 A.W.B. 986=A.I.R. 1938 All. 6.

95 and got possession of property, it was held though the sale had been held, it had not been confirmed and that on the passing of an order under S. 6 of the Encumbered Estates Act all proceedings had to be stayed under S. 7 possession became null and void and

(*Zia ul-Hasan and Yorke, J.J.*)
ADAN MOHAN LAL, 177 I.C. 543=I.O. 50=1938 A.W.B. (O.C.) 119=1938 O.W.N. 911=1938 R.D. 765=1938 O.L.R. 422=A.I.R. 1938 Oudh 221.

S. 7 (1) (a)—Construction—Joint decree against several persons—Application by one only—Stay—if to be granted.

A.I.R. 1938 All 165.

U. P. ENCUM. EST. ACT (1934), S. 7.

In the case of a decree jointly against several persons, the judgment debt being a joint debt, the execution has to be stayed under S. 7 (1) (a) of the Encumbered Estates Act even if one only of the judgment-debtors

—S. 7 (a) (b)—*Nature of proceedings contemplated by—Application by indebted landlord under S. 30, Agriculturists' Relief Act—Competency.*

The proceedings, attachments, processes and suits mentioned in Cls. (a) and (b) of S. 7 of the United Provinces Encumbered Estates Act, refer to proceedings,

an application under S. 30 of the Agriculturists' Relief Act is not incompetent. (*Collector and Rayas, J.J.*) SHEO BARAN SINGH v. RANBIR PRASAD.

177 I.C. 215=1938 A.L.J. 541=1938 A.L.R. 724=1938 A.W.R. (H.C.) 324=11 R.A. 182=A.I.R. 1938 All. 477.

—S. 7 (1) (a)—*Scope of—Suit for specific performance of contract to sell—If a proceeding in respect of a debt.*

the sale which was agreed upon between the parties was in lieu of prior debts which were due from seller to the purchaser, it cannot be said that the suit for specific per-

proceedings are pending becomes aware in any manner whatsoever that an order has been passed under S. 6 of the Act Court.

—S. 7 (1) (b)—*Applicability—Suit for possession of immovable property—If barred by order under S. 6.*
S. 7 (1) (b) of the Encumbered Estates Act has no application to suits for possession of immovable property. A claim to possession of such property does not fall within the purview of S. 7 and is consequently not

U. P. ENCUM. EST. ACT (1934), S. 7

barred by reason of a prior order under S. 6 of the Act. (*Iqbal Ahmad and Allsop, J.J.*) CHAMPA DEVI v. ASA DEVI.

I.L.R. 1938 All. 71=172 I.C. 956=10 R.A. 441=1937 M.D. 577=1938 A.L.R. 53=1937 A.W.R. 933=1937 A.L.J. 945=A.I.R. 1938 All. 8.

—S. 7 (1) (b)—*Bar of suit—Debtors jointly and severally liable—Landlord debtor alone applying under S. 4—Suit against both—Other debtor, if can object to institution of suit as against him.*

Any person who is not a landlord, but who incurs a liability jointly and severally with a landlord who makes an application under S. 4 of the Encumbered Estates Act, cannot plead that no suit can be instituted against him in respect of that liability. It is only in those cases where his liability with the landlord is only joint

to him to contend in the former case, it can be proceeded

who is not a 'landlord.' (*Afuila, J.*) SWEDSHI BIMA CO. v. SHIV NARAIN.

1938 R.D. 876=1938 A.L.J. 1153=1938 A.W.R. (H.C.) 738.

—S. 7 (b)—*Bar of suit under—Forfeiture of tenancy owing to non payment of rent—Suit for ejectment—If barred.*

A suit for ejectment on the ground of forfeiture of tenancy owing to non payment of rent, is a suit 'in respect of' the arrears of rent, which must be held to be

'debt' as defined in the Estates Act, and hence

it. (*Niamatullah, Ag.*) BIHARI LAL v. MAN-

MOHAN LAL. I.L.R. 1938 All. 246=174 I.C. 304=1938 A.L.R. 260=10 R.A. 562=1938 A.W.R. (H.C.) 71=1938 R.D. 103=A.I.R. 1938 All. 165.

suit—Suit for perpetual from a 'landlord' against in respect of any debts.

a perpetual injunction to origgator (who had ed under S. 4 of from dealing with and that the leases cannot be said in in the meaning Estates Act and by the above pro-) JAI NARAIN

1938 O.L.R. 494=1938 A.W.R. (O.C.) 102=1938 O.W.N. 1109=1938 O.A. 897=1938 R.D. 873.

—S. 7 (1) (b)—*"Debt"—Claim for mesne profits.*
A claim for recovery of mesne profits is not a claim

3. 7 (1) (b)—*"Debt"—Suit to enforce pecuniary liability imposed by deed of settlement.*

A suit to enforce a pecuniary liability imposed on the defendant by a deed of settlement is a suit in respect of a "debt" as defined by the Act. (*Iqbal Ahmad and Allsop, J.J.*) CHAMPA DEVI v. ASA DEVI.

I.L.R. 1938 All. 71=172 I.C. 956=10 R.A. 441=1937 R.D. 577=1938 A.L.R. 53=

U. P. ENCUM. EST. ACT (1934), S. 7.

1937 A.W.R. 933=1937 A.L.J. 945=
A.I.R. 1938 All. 8.

—S. 7 (1) (b)—Scope—Suit comprising several reliefs—Some falling under S. 7 (1) (b) and others not falling under—Order staying entire suit—Legality—Order recalling and cancelling stay—Jurisdiction.

Where in a suit it is found that some of the reliefs claimed 'fall within the purview of S. 7 (1) (b) of the U. P. Encumbered Estates Act, but that the others do not so fall, there is no bar to the granting of relief in respect of the claims which do not fall within the mischief of S. 7 (1) (b). An order staying the entire suit in such a case is wrong in law and unjust, but if Court has jurisdiction to recall its order staying the entire suit; and its order so recalling the previous order cannot be challenged, because a Court has inherent jurisdiction to recall and cancel its invalid order (*Iqbal Ahmad and Aliop, J.J.*) CHANPA DEVI ASA DEVI. I.L.R. 1938 All. 71=172 I.C. 956=

10 B.A. 441=1937 B.D. 577=1938 A.L.R. 53=

pledged goods.

Under Cl. (2) of S. 7 of the Encumbered Estates Act, the person who is debarred from dealing in the property defined in that clause, without the consent of the Collector, is the landlord. A pledgee not even of the applicant landlord, but of the firm in which he is one of the partners, cannot, therefore, be restrained from

Competency.

execution of the sale deed by Court that transfers title to the property. The transfer is by the Court on behalf of

U. P. ENCUM. EST. ACT (1934), S. 14.

—Ss 9 (3) and 13—Expiry of time allowed under S. 9 (3)—Effect of—Discharge of debt—Power to grant further time.

The Encumbered Estates Act allows a claimant a certain definite period within which to put forward his claim in a written statement. He has got the period specified in the notice, and in addition a further period of two months at the discretion of the special Judge who may grant it under S. 9 (3) of the Act. But no further time beyond this can be granted. As soon as the period of two months under S. 9 (3) expires, the claim is deemed to have been duly discharged under

cedure—Stay.

special Judge appropriaes the amount as required by S. 9 (5) (a) of the Act (*Darling, S.M. and Marsh, J.M.*) SAHIB SINGH v. NARAIN DAS.

1938 B.D. 558=1938 A.W.R. (B.R.) 255.
—S. 11—Dismissal of claim under—Appar—Court fee. See COURT FEES ACT, SCH. II, ART. 17 (iii).

1938 O.A. 767.

—S. 13—Scope of—Powers of Court—Limit—See

Where the heirs of a mortgagor living in different districts apply under the U. P. Encumbered Estates Act

—Ss. 9 and 11—Default in payment of publication charges within time limited—Powers of special Judge to dismiss application.

1938 O.A. 621=1938 O.W.N. 775=
A.I.R. 1938 Oudh 217.

—S. 14 (7)—Order by special Judge that money and ap—If

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U. P. ENCUM. EST. ACT (1934), S. 25.

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172 I.O. 941 =
1938 O.L.R. 68 (1) = 1938 O.A. 113 =
1938 B.D. 212 = 1938 A.W.R. (G.C.) 10 =
1938 W.N. 135 = 10 B.D. 210 =
A.L.R. 1938 Oudh 86.

—S. 25—Costs—Creditor successfully objecting to application under S. 4 and order under S. 6—Delay in lodging objections—Right to costs

A creditor who succeeds in showing that an application under S. 4 of the United Provinces Encumbered Estates Act was not duly made and that therefore the order under S. 6 should be cancelled will not be awarded costs, if he is guilty of considerable delay in lodging his objection. (*Darling, S.M. and Bomford, J.M.*)
HAR PRASAD v. KARMESWARJ DAS.

1938 B.D. 137 = 1938 A.W.R. (B.R.) 44.

—S. 35 and B.O. No. 21 Judicial—Delivery of possession under S. 35—If barred by B.O. 21 Judicial directing suspension of proceeding under Ch. V of the Act

The circular B.O. 21 Judicial suspend all proceedings under Ch. V of the Encumbered Estates Act, cannot be interpreted delivery of possession of property to such possession under the provision of the Encumbered Estates Act in accordance with the Board never had such an intention all comprehensive but restrictive nature, where by reason of a simple monetary decree passed by the special judge under S. 14 (7), a judgment-debtor becomes entitled under S. 18 to recover possession of landed property formerly given in usufructuary mortgage, the B.O. cannot apply in any action under S. 35 (*Darling, S.M. and SINGH v. KAM CHARAN*)

—Ss. 45 and 46—Appeal—Revision—Order of under S. 6—Right of appeal—Powers of Board of Revenue.

Only parties to a decree or order can appeal. In

1938 B.D. 118 = 1938 A.W.R. (B.R.) 48.

—Ss. 45 and 46—Applicability—Order accepting application under S. 4—Creditor's right of appeal to Board—Revision.

A creditor who succeeds in showing that an application under S. 4 of the United Provinces Encumbered Estates Act was not duly made and that therefore the order under S. 6 should be cancelled will not be awarded costs, if he is guilty of considerable delay in lodging his objection. (*Darling, S.M. and Bomford, J.M.*)

to the proceedings before the Collector on the application. He can, however, apply to the Board by way of revision under S. 46 of the Act. (*Darling, S.M. and Bomford, J.M.*)

U. P. ENCUM. EST. ACT (1934), S. 46

Bomford, J.M.) JAGAT SINGH v. KUNWAR SEN

1937 B.D. 484 = 1937 A.W.R. 1034

—Ss. 45 and 46—Order of Collector in proceedings on applications under S. 4—Creditor aggrieved by—Remedy—Appeal or revision.

As a creditor is not a party to the proceedings before Collector in respect of an application under S. 4 of the Encumbered Estates Act, if he is aggrieved by any order should come to the Board by way of revision under S. 46 and not by way of appeal under S. 45 of the Act (*Darling, S.M. and Bomford, J.M.*)
RATAN SINGH v. JAIDEN SINGH

1938 B.D. 352 =

1938 A.W.R. (B.R.) 194.

—S. 45 (2)—Interpretation—Right of appeal—Extent of—Refusal to set aside dismissal for non-payment of publication charges—Remedy.

S. 45 (2) of the United Provinces Encumbered Estates should not be interpreted to mean that the right of appeal is only against decisions, decrees or orders which fall specifically under the Act in the sense that

1938 O.L.R. 212 = 1938 O.W.N. 494 =
10 B.O. 272 = A.L.R. 1938 Oudh 162.

—S. 45 (5)—"Final"—Meaning of—Revision by High Court—If precluded.

The term "final" used in S. 45 (5) of the U. P. Encumbered Estates Act only means "not subject to appeal but final in the sense that the power of the Court to interfere in revision is shut out." (*and Allop, J.J.*)
ASIRAF v. SAITH
L.R. 1938 All. 110 = 1938 B.D. 78 =
1938 A.L.R. 92 = 173 I.O. 138 = 10 B.A. 482 =
1937 A.W.R. 1081 = 1937 A.L.J. 1101 =
A.T.R. 1938 All. 47

J.M.) SUKHNANDAN v. NURUL HASAN

1938 O.W.N. 1071 = 1938 B.D. 820.

—S. 46 and C.P. Code, S. 115—Distinction

revisional powers contained in S. 46 of the United Provinces Encumbered Estates Act, of calling records, relate only to proceedings in a case under appeal pending in a Court, that is to say, the Act does not provide such wide powers of revision as is provided

S. 6—
of Board

If the Collector unwittingly gives the protection to the United Provinces Encumbered Estates Act making orders under S. 4, to persons who

U. P. ENCLAVE ACT (1934), S. 46.

itled to such protection, it is the duty of the Board of

U. P. LAND REVENUE ACT (1901), S. 24.

—S. 23—Acceptance of resignation tendered by

ESTATES ACT, SS. 4, 6 AND 46. 1938 B.D. 736.
UNITED PROVINCES LAND REVENUE ACT
(III OF 1901)—Partition—Co-sharer purchasing
tenant's grove—Right to be allotted that plot over and
above share at partition—Proper course.

A co-sharer who purchases a tenant's grove is not
entitled to be given that plot over and above his share
at partition; he is entitled to his share in the *sur* and
khudkash, etc., under partition, while he would get so
much of the grove in his *patti* as proprietor as repre-
sents his share of the tenant's grove, and for the rest of
the portion which goes to other co-sharers he would re-
main groveholder. (*Darling, S.M. and Bomford, J.M.*)
SIDHGOPAL v CHANDRA KISHORE. 1937 A.W.R. 1210=1938 B.D. 11.

fect of 116
in prior
assessment
should be

Where a taluqdar claims the privilege of executing a
single engagement in respect of the land revenue for 116

not be re-appointed again. (*Darling, S.M.*
Bomford, J.M.) CHAUHARJA PRASAD v. EM-
1937 B.D. 446.

—S. 23—Scope of—Transfer of patwari on ground
of illicit cultivation—Property—Procedure to be
followed.

The transfer of a patwari under S. 23 of the U. P.
Land Revenue Act cannot be used as a punishment.
Where a patwari is alleged to have carried on illicit
cultivation, the proper procedure is to have framed
charges and the patwari called on to show cause why he
should not be punished even if need be by dismissal.
Transfer is not a recognized form of punishment.
(*Darling, S.M. and Bomford, J.M.*) MASHUQ ALI v
OUDH NARAIN. 1938 B.D. 437=

1938 A.W.R. (B.R.) 284.

—S. 23 (2) (c)—Hostility between patwari and
one Zamindar of his circle—If sufficient reason for
transfer.

Hostility between the patwari and one Zamindar of his
circle is not a sufficient reason for the transfer of the
patwari when the other co-sharers have at least not com-
plained against the man. (*Darling, S.M. and*
Bomford, J.M.) SURAJ BANSI LAL v. BISHWA NATH
CHAKRAWARTI. 1937 B.D. 447.

S. 4(4) of the U. P. Land Revenue Act. (*Darling, S.M.*)
BIRENDRA BIKRAM SINGH v. EMPEROR. 1938 O.W.N. 1115=1938 B.D. 842

—S. 4(16)—Sub-proprietor—Sirdar not exercise
ing any proprietary rights

and Bomford, J.M.) GATSARAN NARAINJI v. RAM
SINGH. 1938 B.D. 565=1938 A.W.R. (B.R.) 307.

—Ss. 4(16) and 39—Sub-proprietorship—Claims
as to—Establishment—Method—Forum.

S.M. and Bomford, J.M.) SHYAM BEHARI LAL v.
EMPEROR. 1938 A.W.R. (B.R.) 100=

1938 B.D. 164.

—S. 23(6)—Notice to some lambardars only—
Validity.

Notice can be sent under S. 23
Land Revenue Act, to some
to others calling for nomina-
ing, S.M. and Bomford, J.M.)

and Bomford, J.M.) LALKA SINGH.
1938 B.D. 123=1938 A.W.R. 78 (B.R.).

—S. 24—Appeal—Appointment of patwari—Dis-
appointed candidate—If can appeal.

ter. (*Darling, S.M. and Bomford, J.M.*)
MOHAMMAD v. MAHARAJA OF NAHAN.

1938 A.L.J. (Supp.) 24=

1938 A.W.R. (B.R.) 147=1938 B.D. 289.

being perfectly suitable—Rejection as being tenant and
co-sharer—If justified.

U. P. LAND REVENUE ACT (1901), S. 24.

The candidate who gets the majority of votes of the lambardars and who is perfectly suitable in the light of the orders of the Board of Revenue ought to be appointed as patwari. He should not be rejected because he is a tenant and co-sharer. (*Darling, S.M. and Bomford, J.M.*) NAWKANG SINGH v. KALKA SINGH.

1938 E.D. 128 = 1938 A.W.R. 78 (B.R.).

—S. 24 (1)—*Nomination of patwaris—Lambardar's right to change his mind—Nomination before notice calling for same—Subsequent receipt of notice—Second nomination—Validity.*

A nomination can always change his mind if the Collector calls for a fresh nomination. Where a lambardar nominates a candidate before any nominations are called for, but on receipt of notice calling for nominations nominates another, he must be held to his original nomination because there is no question of calling for fresh nominations in such a case. (*Darling, S.M. and Bomford, J.M.*) NAWKANG SINGH v. KALKA SINGH.

1938 E.D. 128 = 1938 A.W.R. 78 (B.R.).

—S. 24 (1)—*Nomination of patwaris—Personal attestation by lambardar before Collector—If essential—Nomination not personally attested—If not duly made—Second nomination—It can be called for.*

The Land Revenue Act only lays down that a lambardar must nominate, there is nothing in the Act which requires that the lambardars must attest their nominations before the Collector. A nomination which is not personally attested is not therefore to be regarded as not having been duly made so as to excuse for giving a second nomination. A nomination ought to be discouraged except in notice served on the lambardars inviting nominations. (*Darling, S.M. and Bomford, J.M.*) SINGH v. KALKA SINGH.

1938 E.D. 128 = 1938 A.W.R. 78 (B.R.).

—S. 24 (1)—*Right of nomination of patwaris—Lambardars named in khewat but not named in register or list of mahals under S. 31 (8)—Right of—Proof of due appointment of lambardars—Necessary.*

paying mahals or both. But it must be shown that all the persons named in the khewat are proper lambardars, i.e., that they have been appointed in accordance with the Act. When the list of mahals shows the names of lambardars with date of order of appointment but the entries in the khewat do not give this information, there being difference between the two lists, it is for the lambardars who are not given in the list of mahals to show that they were duly appointed. (*Darling, S.M. and Bomford, J.M.*) NAWKANG SINGH v. KALKA SINGH.

1938 E.D. 128 = 1938 A.W.R. 78 (B.R.).

—S. 32—*Person holding land on rent in lieu of guara—Status of*

The status of a person holding land on payment of rent in lieu of her guara is that of a statutory tenant and should be regarded as such in the *Akhatas*. (*Darling, S.M. and Bomford, J.M.*) RAJESHWARI KUKR v. MAN SINGH.

1937 E.D. 695

—S. 32—*Record of rights—Revision—Duty of Revenue Courts*

Where a record of rights is prepared at a revision of the records, the Revenue Courts are concerned only with the preparation of a register containing the details required by S. 32 of the U. P. Land Revenue Act. Any question as to whether the recorded co-sharers as a whole and their transferees have acquired any rights by

Y. D. 1938-87

U. P. LAND REVENUE ACT (1901), S. 33.

prescription or not, is not for the Revenue Courts to decide. (*Drake Brockman, S.M. and Knox, J.M.*) JADUNATH SINGH v. MUHAMMAD AHMAD ALI KHAN.

1938 E.D. 591 (2)=

1938 A.W.R. (B.R.) 329 (2)

—Ss. 33 and 42—*Correction cases—Annulling of—Correction, when justified—Other remedies open.*

Under S. 33 of the Land Revenue Act, a correction of the papers is justified only either by some change or clerical error. It should be realized that correction cases are not to be used for those purposes for which other remedies by way of regular suits have been provided elsewhere. Where an unrecorded tenant desires to have his name recorded as co-tenant in an occupancy holding, it is his obvious duty either to apply under S. 37 or S. 123 of the Agra Tenancy Act as the case may be having reference to the quarter from which the objection is apprehended. In such a case he cannot apply for correction of papers under Ss. 33 and 42 of the Land Revenue Act. (*Darling, S.M. and Bomford, J.M.*) BASHUK AHMAD v. MUHAMMAD ALI.

1938 E.D. 73 = 1938 A.W.R. 19 (B.R.).

—S. 33—*Correction of errors—Scope of power—Error continuing through three settlements—Proper remedy.*

S. 33 (2) of the United Provinces Land Revenue Act does not contemplate an error which has stood through three settlements from 1870. Rights recorded over a long period of years cannot be modified, much less

1938 E.D. 863 = 1938 A.W.R. (B.R.) 296.

—Ss. 33 and 39—*Entry of long standing—Correction—If proper remedy*

Where an entry had stood the test of 42 years since the regular settlement, cannot be corrected, on the ground of long standing, through the

33 and the following

A claim in occupancy another branch only

can only be established by a regular suit under the Tenancy Act. Before an application under S. 39 of the Land Revenue Act is admitted, the real points to consider are whether there is an error to correct or change the record. (*Darling, S.M. and Bomford, J.M.*) PIRBHU v. PARTAP SINGH.

1938 A.L.J. (Supp.) 26 =

1938 E.D. 418 = 1938 A.W.R. (B.R.) 178.

—S. 33—*Rejection of mutation—Subsequent application for correction, if justified* See U. P. LAND REVENUE ACT, SS. 34 AND 33.

1938 E.D. 239

—S. 33 (2)—*Applicability—Refusal of mutation—Fresh application—Ordering of mutation—If an error, to be corrected*

Where an application for mutation has been rejected on the ground that the applicant was not in possession, and the applicant on a subsequent application to the Tauldar obtains an *ex parte* order for mutation, it certainly is an error within the meaning of Cl. (2) of S. 33 of the Land Revenue Act which should be corrected. (*Darling, S.M. and Bomford, J.M.*) VINAYAWATI v. KUNJ BIHARILAL.

1938 A.W.R. (B.R.) 136 =

1938 E.D. 266.

—S. 33 (2)—*Corrects n of papers—Application for, when justified—Entry based on order of Record Officer—Proper remedy*

U. P. LAND REVENUE ACT (1901), S. 33.

An application under S. 33 of the U. P. Land Revenue

P. Land Revenue Act. (*Darling, S.M. and Mehta, J.M.*) DALLOO v PHULA. 1938 B.D. 733=

1938 A.W.R. (B.R.) 374.

—S. 33 (2)—Correction—Scope of—Application on strength of transaction long anterior in date—If can be granted—Establishment of title in Civil Court—Necessity—Time for application.

Where correction of the khewat is asked for on the

BAHADUR SINGH v. ACHH
1938 O.W.N. 283=

—Ss 34, 38 and 39—Applicability—Thekka lease for term—Expiry of—Application by zamindar for removal of name of thekhdadar—Liability to fine under S. 38—"Re-transfer."

Where a zamindar grants a thekka of a village for a certain period, there is no doubt a transfer within the meaning of S. 34 of the U. P. Land Revenue Act when the thekhdadar is put in possession. But there is no transfer under the section on the expiry of the lease. An application by the zamindar after the expiry of the thekka lease for removal of the name of the thekhdadar is a proceeding under S. 39 of the Act, and consequently no fine is leviable from the zamindar in respect of the same under S. 38 (*Darling, S.M. and Bomford, J.M.*) ADITYA NARAIN SINGH v. EMPEROR.

1938 A.W.R. (B.R.) 107=1938 B.D. 172

—S. 34—Mutation—Right to—Possession on the basis of decrees of Civil Court—Effect of pending appeal against decree of Civil Court.

Where a party has obtained possession because of a decree of Civil Court, clearly on that basis he is entitled to mutation, though an appeal may have been preferred against the decree of the Civil Court. So long as he is in possession of the property, his rights are not affected by the pendency of the appeal. (*Darling, S.M. and Bomford, J.M.*) SHAMBU PRASAD v. S. M. 1938 B.D. 691 (1)=

1938 A.W.R. (B.R.) 302=1938 A.L.J. (Supp.) 130.

—S. 34—Mutation on strength of family settlement—Dispute as to settlement—Declaration from Civil Court—Necessity.

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in dispute as against the other members (*Darling, S.M. and Bomford, J.M.*) LACHHMAN v. PATHAK v. LAKHPAT PATHAK. 1938 B.D. 451=

1938 A.W.R. (B.R.) 314.

U. P. LAND REVENUE ACT (1901), S. 34.

—S. 34—Mutation proceedings—Widow in possession

claims to hold the dower debt, the entitled to mutation. e opposite party to The mere obtain- would not be of any avail to them, for as it is clear from S. 387 of the Succession Act, the value of the certificate in proving title is nil. (*Darling S.M. and Bomford, J.M.*) RAHMAT ULLAH v. SALEHA BINI. 1938 B.D. 42=1938 A.W.R. 21 (B.R.).

—Ss. 34 and 33—Mutation—Rejection of application of alleged vendor—Vendor if can apply for correction or oppose application for mutation by heirs of

by an alleged to him later on, or correction of mutation by the successful party cast on them by

S.M. and Bomford, J.M.) GIRJA DAYAL v. TOKKEY SINGH. 1938 A.W.R. (B.R.) 130=1938 B.D. 239.

—S. 34—Mutation—Right to—Compromise decree among claimants—Possession of half and right to resume possession of the other half of the property on the death of a lady—Death of the lady—Right to ask for mutation on strength of partial possession.

Where in settlement of disputes between the daughter's son and daughter-in-law a compromise decree was passed by which the grandson was put in possession of half the property, with a right to get the other half on the death of the daughter-in-law, and mutation was accordingly made, on the death of the daughter in law the grandson can on the strength of the decree obtain mutation at the hands of the Revenue Courts under S. 34 of the Land Revenue Act, in respect of the whole property. (*Darling, S.M. and Bomford, J.M.*) KUDRA PRATAP SINGH v. BANS BHADUR SINGH. 1938 O.W.N. 576=1938 B.D. 553=

1938 A.W.R. (B.R.) 250.

—S. 34—Transfer in respect of which mutation can be effected.

Mutation can only be effected in favour of a transfer in respect of actual proprietary or other rights, such as under proprietary rights in a mahal. (*Darling, S.M. and Bomford, J.M.*) JANG BHADUR SINGH v. SHEO PARTAB SINGH. 1937 B.D. 538.

—S. 34 (5)—Objection—Plea that mortgagees of specific plots of six are not entitled to sue in ejectment—If can be raised for first time in appeal.

Though a point of law can be taken at any time, a fact cannot be so raised in a mortgagee of specific plots of six situated in the khewat, and a plea under the Land Revenue Act to the effect that such mortgagees, not having been shown in the khewat, were not entitled to sue in ejectment cannot be raised for the first time in appeal, as it involves a question of fact. (*Bomford, J.M.*) KANHARI DUSADH v.

U. P. LAND REVENUE ACT (1901), S. 34.

SITA RAM LOHAR.

S. 34, Expl.—Family settlement.
Appointment of arbitrators to an arrangement is a family settlement. Where one of the members applies for mutation under S. 34 of the Act, the point for consideration is whether the award has been acted upon. The finding of the High Court, that the family settlement occurring in the Expl.

an arrangement is a family settlement. Where one of the members applies for mutation under S. 34 of the Act, the point for consideration is whether the award has been acted upon. The finding of the High Court, that the family settlement occurring in the Expl.
Cour poses of an application under S. 34 of the Act, the point for consideration is whether the award has been acted upon. The finding of the High Court, that the family settlement occurring in the Expl.
GAYA PRASAD
1938 A W R (B R) 314

S. 35—Scope of—Disputed mutation case—Powers of Tahsildar to decide.

Under the second paragraph Provinces Land Revenue Act, mutation case is beyond the (Darling, S. M. and Bomf)
UPADHYA v. PARBHU NATH.
1938 O. W. N. 487 = 1938 A W R (B R) 314

the Oudh Rent Act as amended in 1922 (Darling, S. M.)
HINDESHWARI MISIR v. BAIJNATH PANDE
1938 A W R (B R) 104 = 1938 R D 168

S. 36—Claim to ex-proprietary rights in khud

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S. 36
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pose
on the part of the claimant
ment of a regular claim under S. 36. (Darling, S. M.)
BHOLI v. CHHAJJU SINGH
1938 A W R (B R) 125 = 1938 R D 199.

S. 36—Proprietor executing mortgage and waiving rights under S. 15(5) of the Tenancy Act—Enters how to be made

Where a mortgage states that he has handgagets, he waives his rights under S. 15(5) of the the mortgage within 12 recognised in the paper.
J. M. GHURAN PANDEY v. HIRA LAL
1938 R D 391 = 1938 A I J (Supp) 52 = 1938 A W R (B R) 223

S. 36—Scope—Agreement having rent in contravention of S. 14, Agra Tenancy Act—Compromise order

U. P. LAND REVENUE ACT (1901), S. 39

the Agra Tenancy Act is void. All proceedings under S. 36 of the U. P. Land Revenue Act based on such an agreement of compromise is not a proper order on which a suit for arrears of rent can be
(Bennet J) SUCHIT CHAUBEY v. BALDEO
173 I M. 425 = 1938 R D. 47 = 1938 A L R 137 = 1937 A W R. 1181 = 1937 A L J. 1284 = 10 E. A. 482 = A I B. 1938 All 74.

S. 39—Application under, for establishing claim to sub-proprietorship—If proper method *See U. P. LAND REVENUE ACT, SS. 4(16) AND 39*

S. 39—Application under—Points to be considered—U. P. LAND REVENUE ACT, 1938 A L J (Supp.) 26.
sections—Report to—Long drawn out disputes—Decision of question of rights—If open—Claim to be recorded as joint occupancy tenant—Proper procedure.

The correction sections of the U. P. Land Revenue Act are not to be used for the settlement of long drawn out disputes. Where the entries in the papers are of

the same Act having section 18 d, J. M.)

D. 244.
or S 42

Test to find out.
Neither a deciding officer nor the contending parties can convert a case into one under S. 42 of the U. P. Land Revenue Act. It is the pleading alone that will

lessee under faras lease—Lessor found not to have lost possession—Right to restoration of entry—Lessor's remedy—Said under S. 123 or S. 59 of the Agra Tenancy Act.
Where a lease is found to be faras, a lessor who has never lost possession, is entitled to ask for expunction of

NIADAR **1938 A W R (B R) 157 = 1938 R D. 253.**
Sa 39 227 and 228—Jurisdiction—Correction case transferred by Sub Divisional Officer to Honorary Assistant Collector—Competency of latter to hear or dispose of.

U. P. LAND REVENUE ACT (1901), S. 39, -

Under S. 227 of the U. P. Land Revenue Act only an Assistant Collector in charge of a sub-division has the powers of a Collector under S. 39, and under S. 228, an

but the powers which the Collector can exercise under S. 228. An Assistant Collector is not competent to hear and determine appeals referred to him by the Assistant Collector. *S.M. and BOMFORD, J.M.* CHAMAR

1938 R.D. 160 = 1938 A.W.R. (B.E.) 91.

—S. 39—Scope of—Award of expropriatory rights by order of Court—Summary proceedings under S. 39, if can be avoided to abrogate such rights.

In summary proceedings under S. 39, of the Land Revenue Act the expropriatory rights formally awarded by a decree of Court, cannot be abrogated. The proper procedure would be to retain the names of the expropriatory tenant in the *khatani* until it is established by a regular suit under the Tenancy Act that they have lost their rights. (*Darling, S.M. and Bomford, J.M.*) *MALKHAN v. ASA RAM.* 1938 R.D. 192 = 1938 A.L.J. (Supp.) 11 = 1938 A.W.R. 57 (B.E.).

—S. 39—Scope of—Partition of Court effected by parties—Application for change of entries in *khatani*

ed and after making such a partition out of Court, come to the Revenue Court and get the same entered in the papers by the back door of a correction case under S. 39 of the Act. Such a case of correcting errors as of transaction that has taken place in the interests of parties. There is the *khatani* under S. 39 if the changes based on possession *khatani* only if they do not involve questions involving long drawn out disputes. The Court under S. 39 cannot be asked to record changes in the proprietary sections into which the *khatani* is divided, which can only be done at partition. If the parties want entries to be recorded in accordance with their deed of private partition, they must go to the Civil Court and get the validity of the deed confirmed first, before the application can be entertained. (*Darling, S.M. and Bomford, J.M.*) *BIKARNAJIT NARAIN SAHI v. RANJEET NARAIN SAHI.* 1937 A.W.R. 1207 = 1938 R.D. 7

—S. 41—Applicability—Boundary dispute as to plots in *abadi*—Proper remedy

Where the dispute is about the boundaries of plots in an *abadi*, the Revenue Courts have not the least interest or concern in such matters. S. 41 of the Land Revenue Act was never intended for such cases, and parties should be referred to a Civil Court in the first instance. (*Darling, S.M. and Bomford, J.M.*) *BRIH MOHAN v. ANANT LAL.* 1938 R.D. 537 = 1938 A.L.J. (Supp.) 68 = 1938 A.W.R. (B.E.) 242.

—S. 42—Applicability—Dispute only as to whether a party is a tenant and not as to his status.

Where the only question is as to whether a party is a tenant at all and there is no dispute as to his status as a tenant, S. 42 of the U. P. Land Revenue Act does not apply to such a case. (*Darling, S.M. and Bomford,*

U. P. LAND REVENUE ACT (1901), S. 56.

J.M. *RAJ BAHADUR v. RAM KISHORI.*

1938 A.W.R. (B.E.) 134 = 1938 R.D. 244.

—S. 42—Decision under—If bars later suit under Tenancy Act.

Under S. 42 of the U. P. Land Revenue Act, the status of the landlord, the status of the tenant, the status of the decided to be that of an occupancy tenant cannot later on in proceedings under

S. 121 of the Agra Tenancy Act assert that the tenant has no *locus standi*. He is estopped from doing it. (*Darling, S.M. and Mitha, J.M.*) *BASHIRAN BIBI v. SAHEBZAD KHAN.* 1938 R.D. 837.

—S. 42—Decision under—If *res judicata*—Suit under S. 121—Bar. See C. P. CODE, S. 11.

1938 R.D. 182.

—S. 42—Scope.

S. 42 only comes into force when proceedings have been started under S. 33. It is not an alternative for proceedings under the declaration sections. If as a result of a change it is necessary to alter the status of a recorded and an admitted tenant then indeed the procedure has to be under S. 42. But this procedure cannot be used to decide cases which can only be decided by regular suits. (*Darling, S.M. and Bomford, J.M.*) *MUNNI SARAN TEWARI v. DRIGPAL LILHAR.* 1937 R.D. 450.

—S. 42—Scope—Dispute as to status of person admitted as tenant—Proceedings under Act—Property in the absence of any change or clerical error.

A dispute as to the status of a person admitted as a tenant has to be decided under the U. P. Land Revenue Act according to S. 42 of that Act. Though there has been no change and no clerical error justifying proceedings under the Act, it may be tried under the Land Revenue Act. (*Bomford, J.M.*) *DULAKA v. NARAIN SINGH.* 1937 A.W.R. 1213 = 1938 O.W.N. 27 = 1938 R.D. 18.

—S. 43—Scope—Correction of rent—Duty of

year, unless of course there has been formal enhancement or abatement in accordance with the law. (*Darling, S.M. and Bomford, J.M.*) *GANPAT RAI v. DULLE*

1938 A.L.J. (Supp.) 85 = 1938 R.D. 484 = 1938 A.W.R. (B.E.) 226.

—Ss. 45 and 197—Limitation for nomination of *lambardar*—Starting point.

The period of one month prescribed in S. 45 (2) of the U. P. Land Revenue Act with reference to the nomination of a *lambardar* has to be calculated from the date of the last proclamation made in accordance with S. 197 of the Act and not from the date when such proclamation is signed, for a proclamation is no proclamation until proclaimed. (*Darling, S.M. and Mitha, J.M.*) *SHAMBHU NATH v. DAMMAN LAL.* 1938 R.D. 859 = 1938 A.W.R. (B.E.) 385.

—S. 45—Plot proprietor—If a co-sharer of the mahal.

Any identification of a plot proprietor with a co-sharer of a mahal so far as S. 45 of the Land Revenue Act is concerned, is based on a misinterpretation of S. 142 of the Act. (*Darling, S.M. and Bomford, J.M.*) *RAHMAT ULLAH MIAN v. RAM KISHORE MISRA.* 1938 R.D. 74 = 1938 A.W.R. (B.E.) = 1938 O.A. 172 = 1938 O.W.N. 792.

—S. 56—'Nadhvana', if a cess See AGRA TENANCY ACT, S. 132. 1938 A.W.R. 38 (B.E.).

U. P. LAND REVENUE ACT (1901), S. 79.

—S. 79—Holding governed by—Rent, if liable to enhancement by suit under ss. 33 and 35 of Oudh Rent Act. See OUDH RENT ACT, SS. 33 AND 35.

1938 E D. 403

—S. 86—"Nadhvana", if a cess. See AGRA TENANCY ACT, S. 132. 1938 A.W.R. 38 (B.R.)

—S. 101—(a) Claim for reduction of under-proprietary rent owing to reduction in revenue—Procedure to enforce—If can be pleaded in defence in a suit for arrears.

There is a specific procedure provided by S. 101 of the U. P. Land Revenue Act with regard to claims for reduction of under-proprietary rent based on reduction of revenue, and only the Collector is conferred jurisdiction in the matter. As such, a claim of this nature cannot be set up as a defence to a suit for rent in a revenue Court, by one who himself is the tenant under S. 101.

MOHAMMAD LAJAZ RAZAK KHAN v. NATA BIN

1938 O W N 1124=1938 O A 910=

1938 E D 891=1938 A.W.R. (B.O) 137

—S. 106—"Partition"—Meaning of.

The word "partition" is not used in the narrow sense of mere arrangement into units of area. It imports and includes that rights in these units are distributed among the sharers (Sir George Rankin) BAJRANG

BAHADUR SINGH v. HENI MADHU BAKHSH SINGH.

176 I C 775=1938 A.W.R. (P.C) 151=

13 Luck 508=1938 E D 606=1938 O W N 606=

68 O L J 193=1938 O A 529=11 E P C 17=

1938 O L E 321=1938 A L J 766=

1938 A L B 558=4 B R 713=

A.I.R. 1938 P C 210=(1938) 2 M L J 596 (P.C.)

—S. 106—Perfect or imperfect partition—Test

Where there is division into different parts and thoks

"mokammal" or perfect patidari is not at all the same thing as saying that there was a perfect partition (Bennet and Varma JJ) CHANDRA JANG SINGH v. SITA KAM.

1938 A L J 641=

177 I C 123=11 R A 168=

1938 E D 702=1938 A L E 706=

1938 A.W.R. (H.C) 382=A I R 1938 All 469

—S. 107—Application for imperfect partition—Village suffering from serious financial action—Duty of partition officers.

Where a village is admittedly suffering seriously from financial action, an application for an imperfect partition in respect of such a village ought never to be entertained at all (Darling, S.M. and Bomford, J.M.) RAM NATH v. KANHAIA LAL

1938 E D 28=

1938 A.W.R. 25 (B.R.)

—S. 109—Scope and effect of—Claim—When can be made

Under S. 109 of the U. P. Land Revenue Act any party to a partition can apply to have the partition quashed up to the date of the confirmation of partition. Any co-sharer is legally entitled to put in a claim under S. 109 at the last possible moment (Darling, S.M. and Bomford, J.M.) RAM NATH v. KANHAIA LAL

1938 E D 28=1938 A.W.R. 25 (B.R.)

—S. 110—Proclamation—Duty to issue, if on partition officer

A partition officer who knows that the issue of a proclamation is a very important matter and that it requires his personal attention, ought not to entrust it to the partition ahmad. (Darling, S.M. and Bomford, J.M.)

U. P. LAND REVENUE ACT (1901), S. 218.

ANMOL SINGH v. AMAR BAHADUR SINGH.

1938 E D. 369=1938 A L J (Supp.) 42=

1938 A.W.R. (B.R.) 201.

—S. 110(2)—Application to join in partition—Expiry of limitation—If can be allowed—Fresh proceedings—Desirability

It would be a very dangerous precedent to allow parties to apply to join in the partition after the expiry of the statutory period. In such cases fresh proceedings should start. (Darling, S.M. and Bomford, J.M.) ANMOL SINGH v. AMAR BAHADUR SINGH.

1938 E D 369=1938 A L J (Supp.) 42=

1938 A.W.R. (B.R.) 201.

—S. 117—Applicability—Absence of any interest outside his thok—Right to share in lands in other thoks.

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thok, he is not the

holder of lands in thoks with the owners of other thoks and hence he cannot get any share of any lands recorded in other thoks. (Bennet and Varma, JJ) CHANDRA JANG SINGH v. SITA KAM.

1938 A L J 641=

177 I C 123=1938 E D 702=

11 E A 168=1938 A L B 706=

1938 A.W.R. (H.C) 382=A I R 1938 All 469.

—S. 121—Suit under—Prior decision under S. 42

—If a bar. See C. P. CODE, S. 11

1938 E D 133.

—S. 126—Partition—Allotment of air, to different co-sharers—Expropriatory rights—Conditions necessary to give rise to—Land let to tenants—If 'held'

According to S. 126 of the United Provinces Land Revenue Act, if expropriatory rights are to arise in air land which falls in the lot of another co-sharer at a partition, then it is essential that this air land should be actually held by the party claiming expropriatory rights

continue to cultivate it after

its cannot be said that it is 'held'

his section So long as the

is not possible for the co-

sharer to cultivate this area after partition (Darling, S.M.) MAHOMED HASAN KHAN v. MAHOMED AHMAD KHAN.

1938 E D 759=

1938 A.W.R. (B.R.) 382.

—S. 146—Applicability—Recovery of arrears of rent in respect of military land.

All arrears of rent for military land in any cantonment area, are recoverable as arrears of land revenue and may be realized by the Collector under S. 146 of the Land Revenue Act (Darling S.M. and Bomford, J.M.) SECRETARY OF STATE v. RAM NATH SINGH

1938 E D 798.

—S. 201—Applicability—Question of title—Ex parte order of Revenue Court under S. 111—Appeal.

S. 201 U. P. Land Revenue Act, is not applicable to an ex parte decision on a question of title under S. 111 of the Act by a Revenue Court (Darling, S.M. and Bomford, J.M.) SIDHGOPAL v. CHANDRA KISHORE.

1937 A.W.R. 1210=1938 E D. 11.

—S. 213—Third appeal—Legal point—Necessity.

To bring a third appeal within the range of S. 213 of the United Provinces Land Revenue Act, it must involve a legal point. Where in partition proceedings two rival schemes were before the Court and the two lower appellate Courts have accepted one of them, there is no legal point involved and a third appeal would have to be dismissed (Darling, S.M.) SHIPAL SINGH v. MANSA DIN

1938 E D 756=

1938 A.W.R. (B.R.) 381.

—Ss 218 and 34—Mutation proceedings—Order based on compromise—One of parties subsequently d

U. P. LAND REVENUE ACT (1901), S. 218.

ing genuineness of compromise—Board's power to revise order.

Where in a mutation proceeding an order was passed in terms of a compromise filed on behalf of the parties but one of the parties subsequently appeared and stated that she had signed a blank paper and knew nothing of the terms of the compromise, and there was great justification for regarding the proceedings of the opposite party with great suspicion, the Assistant Collector should bring the case to the notice of the Board which can exercise its powers of revision under S. 218 of the Land Revenue Act. (*Darling, S. M. and Bomford, J. M.*) BHAWANI PRASAD v. JANAK KISHORI.

1937 E.D. 593.

—S. 218—Reference—Absence of illegality or impropriety—If justified.

In the absence of any illegality or impropriety in the order passed, a Commissioner would not be justified in referring the case to the Board of Revenue under S. 218 of the Land Revenue Act. (*Darling, S. M. and Marsh, J. M.*) RAM RAN VIJAI PRASAD SINGH v. RAM SIDDH.

1938 E.D. 625.

—1938 A.W.R. (B.B.) 297—1938 A.L.J. (Supp.) 106.

—S. 220—Review—Who can exercise power of.

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1938 A.W.R. (B.B.) 297—1938 A.L.J. (Supp.) 106.

—S. 233 (k)—Applicability—Suit for partition of house—Agricultural land also attached to it Forum—Determining factor.

Where a suit was for partition of a house situated in

1938 R.D. 727—1938 A.L.R. 622—
11 E.A. 119—1938 A.L.J. 513—
A.I.R. 1938 All 391

—S. 233 (k)—Partition proceedings—No objection under S. 111—Principle of res judicata, if applies.

The principle of res judicata will not apply where no objection was made under S. 111 with the result that Ss. 111 and 112 do not come into operation. In such a case the partition proceeds upon the entries in the khewat; the Collector does not function as a Civil Court; he does not have in that or any other capacity to do to its correctness expressly or implicitly. To the right to a decision from the Civil Court is the mere fact that

U. P. MUNICIPALITIES ACT (1916), S. 3.

not so raised and the partition is completed, S. 233 (k) debars parties to the partition from raising the question subsequently in a Civil Court. It cannot be said that the only thing excluded from the cognizance of the Civil Court by Cl. (k) is the schematic arrangement of the land into units of area and that no question or proprietary right comes within the prohibition of access to the Civil Court. (*Sir George Rankin*) BAJRANG BAHADUR SINGH v. BENI MADHO BAKHSH SINGH.

13 Luck 508—1938 R.D. 606—1938 O.W.N. 606—

1938 O.A. 529—11 E.P.C. 17—1938 O.L.R. 321—

1938 A.L.J. 786—1938 A.L.R. 558—

4 B.R. 713—68 M.L.J. 193—

175 I.C. 775—1938 A.W.R. (P.C.) 151—

A.I.R. 1938 P.C. 210—(1938) E.M.L.J. 596 (P.C.)

—S. 233 (k)—"With respect to partition."

A suit is brought with respect to the partition if it is brought to impugn the distribution which by partition has been effected under the Act. (*Sir George Rankin*) BAJRANG BAHADUR SINGH v. BENI MADHO BAKHSH SINGH.

13 Luck 508—1938 R.D. 606—

1938 O.W.N. 606—1938 O.A. 529—11 E.P.C. 17—

1938 O.L.R. 321—1938 A.L.J. 786—

1938 A.L.R. 558—1938 A.L.J. 193—

L.W.R. (P.C.) 151—

M.L.J. 596 (P.C.).

GOVERNMENT

Cl. 9 (2)—Applicability—Expropriation tenants whose rent is fixed by Court.

Cl. 9 (f) of the Revenue (B) Department Resolution of the Local Government No. 4308-B (1932) applies only to those tenants who obtained land from the zamindar in

177 I.C. 61—11 E.O. 14—
38 O.W.N. 739—1938 O.A. 594—1938 D.R. 717—
1938 A.W.R. (C.O.) 12—1938 U.L.R. 367—
A.I.R. 1938 Oudh 204.

U. P. LOCAL RATES ACT, (1914) S. 8—

Computation of local rate payable—Rural police rate shown to be recoverable from under proprietor

Where according to the revenue papers, the rural police rate payable under the U. P. Local and Rural Police Rates Act of 1906 in respect of the land in question is shown to be recoverable from the under proprietor, they are liable to pay the rate not only at the rate mentioned in the first part of S. 8 of the U. P. Local Rates Act but also according to that mentioned in Cl. D

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omply with
(Bennet, J.)

1938 A.L.R. 817—
38 All 571.

TIES ACT

(II OF 1916), Ss. 3, Cl. (1) (a) and 337 (1)—

Municipal area and notified area—Distinction between.

The case of a municipal area is different from that of a notified area. The distinction is this, that while an

1938
1938 A.L.R. 551
175 I.C. 7
A.I.R. 1938 P.C.
—S. 233 (k)—Q
tion proceedings—Partition completed—Question, if
can be raised in Civil Court.

If a question of title affecting the partition which might have been raised in the partition proceedings is

U. P. MUNICIPALITIES ACT (1916), S. 74.

U. P. MUNICIPALITIES ACT (1916), S. 302

Dismiss municipal servants—Suit for damages in Civil Court for dismissal—Maintainability—Rules under S. 77 (1) (b)—Contravention of—Effect—Remedy of aggrieved persons

The chairman of a M. dismiss certain class of P. Municipalities Act, and no executive officer, the

—S. 186 and 307—Notice under S. 186—When can be issued—Notice before orders on application for sanction of construction—Validity—Disobedience, if an

notice under it should be on notice of public person

1937 A.W.R. 1166=1937 A.L.J. 1227=
A.I.R. 1938 All. 57.

—S. 77 (1) (b)—Rules framed under—Force of—Non-compliance—Effect—Suit in Civil Court for damages by servants dismissed under Ss. 74 and 76—Maintainability See U. P. MUNICIPALITIES ACT, SS 74 AND 76 1937 A.W.R. 1166=1937 A.L.J. 1227=
A.I.R. 1938 All. 57.

—S. 116 (b)—Applicability—Well dedicated to public for specific purposes—If vests in municipality.

whether natural or made otherwise. There is nothing in the section to qualify that word. A Municipal Board is entitled under the section to issue a notice in respect of a natural depression as well (Ganga Nath, J.)
GOVIND DEOJI v. MUNICIPAL BOARD OF BINDRABAN
174 I.C. 445=1938 A.L.R. 273=
1937 A.W.R. 1203=1937 A.L.J. 1358=
10 E.A. 7=7=A.I.R. 1938 All. 110

—S. 269—Notice under—Right to issue—Notice issued by Medical officer—Legality

been dedicated in the public 'Bennet, A. C. J. and

management—Trust in existence before constitution of the Municipality—If covered by

It is much too narrow a meaning to give to the

competent to issue notices under S. 269, and the notices issued by him are quite valid and legal. (Ganga Nath, J.)
GOVIND DEOJI v. MUNICIPAL BOARD OF BINDRABAN
174 I.C. 445=1938 A.L.R. 273=
1937 A.W.R. 1203=1937 A.L.J. 1358=
10 E.A. 7=7=A.I.R. 1938 All. 110.

—S. 269—Powers under—Exercise of—Interference by Civil Court—Jurisdiction

A Municipal Board possesses very wide powers under act, but they are not so or in a capricious, they are so used, they (Ganga Nath, J.)

MAN LAL v. ZAKRUDDIN

I.L.R. (1938) All. 814=1938 A.L.R. 812=
178 I.C. 89=1938 A.W.N. (H.C.) 661=
1938 A.L.J. 901=A.I.R. 1938 All. 518.

—S. 128 (1) (ix)—Liability to tax under—Pay office of a bank—If entitled to a deduction for interest paid to Branch office.

As regards the assessment of tax under S. 128 (1) (ix) of the U. P. Municipalities Act of a pay office of a

BAN.

174 I.C. 445=1938 A.L.R. 273=
1937 A.W.R. 1203=1937 A.L.J. 1358=
10 E.A. 577=A.I.R. 1938 All. 110.

—S. 298 (2) (j) (b)—Death Register maintained under—Admissibility—Value See EVIDENCE ACT, SS. 35 AND 79—MUNICIPAL DEATH REGISTERS.
1938 A.L.J. 235.

—S. 302—Reasonable time—Province of Court to determine—Three days—Sufficiency

U. P. MUNICIPALITIES ACT (1919), S. 326.

It rests with the Court to determine whether the time specified in any notice is a reasonable time for the performance of the required act. It was held in this case that a period of three days fixed by a notice under S. 186 for the demolition of a wall was not a reasonable time. (*Zia-ul Hasan, f.*) KAUSILA v. EMPEROR.

1938 D.A. 62 = 1938 O.L.R. 373 =

177 I.C. 90 = 11 B.O. 24 = 39 Cr.L.J. 862 =

1938 A.C. 84 = 1938 O.W.N. 833 =

A.I.R. 1938 Oudh 199

—S. 326—Applicability—Notice under S. 269 issued by Medical Officer of Municipal Board—Suit to declare illegal and for injunction—Limitation.

174 I.C. 445 = 1938 A.L.R. 273 =

1937 A.W.B. 1203 = 1937 A.L.J. 1358 =

10 B.A. 577 = A.I.R. 1938 All 110.

in for balance

necessary.

is in respect of

under a contract

—Zamindar, if can claim right in soil in respect of notified area.

According to S. 337 of the U. P. Municipalities Act a notification is to be made by the Government in respect of a local area other than an agricultural village. The decision of the Local Government that a local area is

U. P. PUBLIC GAMBLING ACT (1925), S. 5.

suppliers, with a printed line stating that the ghee is actual village ghee. This line cannot amount in any sense to a written warranty and the fact that the signature of the vendor appeared in the bottom of the voucher does not imply that the signature is attached to that particular line. The line in question is a mere advertisement (*Bennet, f.*) EMPEROR v. PANCHAM-KAM.

I.L.R. (1938) All 797 = 177 I.C. 704 =

1938 A.L.R. 778 = 11 B.A. 217 = 39 Cr.L.J. 959 =

1938 A.L.J. 780 = 1938 A.W.B. (H.U.) 490 =

A.I.R. 1938 All 538.

—S. 6 (c)—Sold in the same state—Proof.

In order to substantiate a plea under S. 6 (c) of the

act, that an accused sold the

me state in which he put-

re must make a statement

ndent evidence in support

(*Bennet, f.*) EMPEROR

1938 A.L.J. 780 =

All 797 = 177 I.C. 704 =

A. 217 = 39 Cr.L.J. 959 =

30 = A.I.R. 1938 All 538.

—S. 15—Non-compliance with—Particulars not

given in summons—It justifies acquittal—Effect of

S. 537, Cr. P. Code—Requirements of summons—

Sufficiency.

There is nothing in the U. P. Prevention of Adultera-

tion Act which justifies the conclusion that it was the

intention of the legislature that a failure to give the

15 of the Act

e perfectly clear

of the offence

his conduct.

perfectly clear

ness and omis-

th substantial

a sample of

ghee was taken from the shop of the accused and that he

was prosecuted under S. 4 of the Act and that the Sanitary

Inspector was the prosecutor, it contains all the

particulars required by S. 15 of the Act. (*Allot f.*)

HIRA LAL v. EMPEROR 1938 A.L.J. 497 =

I.L.R. (1938) All 646 = 1938 A.W.B. (H.C.) 335 =

1038 A.C. 41 = 176 I.M. 325 = 11 B.A. 80 =

1938 A.L.R. 594 = 39 Cr.L.J. 738 =

A.I.R. 1938 All 385.

UNITED PROVINCES PUBLIC GAMBLING

ACT (1 OF 1925), S. 1 (2)—Playing cards for money

A.M.L.J. 51.

Condition neces-

in arise when

ent is attacked,

Magistrate was given

either the officer seeking

this information. If the

y because the police officer

a legal warrant under S. 5

and hence no presumption

arise from it (*Weston, f.*)

EMPEROR 1938 A.M.L.J. 15.

—S. 5—Issue of warrant—Considerations—Duty

of Magistrates.

UNITED

ADULT

Written

with pen

When.

Prevention of Adulteration Act, it is not enough if he merely produces cash vouchers from the wholesale

U. P. PUBLIC GAMBLING ACT (1925) S. 5.

It is the duty of Magistrates issuing warrants under S. 5 of the Gambling Act to satisfy themselves that there is reasonable justification for issuing warrants (*Weston*) **MOHAMMAD HAYAT KHAN v. EMPEROR**
1938 A M L J 51.

—S. 5—*Time of warrant—Validity—Nature of evidence to prove.*

Where in gambling cases the warrant is usually attacked the police should lead evidence to show the manner in which the warrant was obtained. It was not necessary to call the officer who nor it is essential that the police source of their information. But should be led to rebut the suggestion that the warrant was issued as a matter of routine merely at the request of a police officer, who himself was not authorised to issue a warrant. (*Weston*) **NEMI CHAND v. EMPEROR**.
1938 A M L J 40.

—S. 6—*Pre-emption under—If can arise when warrant is illegal.* See U. P. PUBLIC GAMBLING ACT, SS. 5 AND 6.
1938 A M L J 13

U P REGULATION OF REMISSION ACT (1938), S. 2—Remission of under proprietary rent owing to fall in price—If available.

Though rent includes under proprietary rent in the Oath Rent Act, yet where the Local Government by its executive orders, do not appear to have contemplated a reduction of order-proprietary rent on account of a fall in prices, S. 2 of the U. P. Regulation Act, could not help a person unless any order covered by S. 2 under which such a reduction (*Zia-ul-Hassan*)
EJAZ RASOOL KHAN v. MATA DIN
1938 A W R (CC) 137 = 1938 O W N 1124 =
1938 A 910 = 1938 R D 891

UNITED PROVINCES REGULATION OF SALES ACT (XXVI OF 1934), S. 3—Absence of notice to judgment debtor to his correct address—Validity of proceedings in his absence.

Where no effort was made to serve the judgment-debtor with notice at his correct address, all proceedings taken under the Regulation of Sales Act in the absence of the judgment-debtor are defective and a fresh opportunity should be given to him to contest the valuation (*Darling S M and Bomford, J M*) **TRIFH SINGH v. LACHHMI RAM**
1938 R D 487 =
1938 A W R (B R) 271

—S. 3—*Failure of judgment debtor to contest valuation—Chance to reopen it in revision.*

Where a judgment debtor had a chance to contest the valuation and against which he could have appealed does not avail himself of that, he should not be given a chance of reopening it in revision, and particularly so in a case where the valuation has been made according to the rules (*Darling S M. and Bomford, J M*) **BHAROSA MAL v. JUKHA MAL**
1938 R D 425 =
1938 A W R (B R) 292

—S. 3—*Order accepting valuation passed in judgment debtor's absence—Judgment debtor applying for*

U P. REGUL. OF SALES ACT (1934), S. 3.

and Bomford J M) **RAM NANDAN BHARTI v. RANLAGAN BHARTI**.
1937 R D 582.

—Ss 3 and 4—*Proceedings under—Orders thereon subsequent to passing of orders under S. 6 of the Encumbered Estates Act—Effect.* See U. P. ENCUMBERED ESTATES ACT, SS. 4 AND 6.
1938 A W R (B R) 212.

—S. 3—*Property consisting of tank—Valuation of tank.*

no doubt a profit to the purposes of (*ord., J M*)

BALMAKUND v. CHANGER.
1937 R D 411.

—S. 3—*Property valued consisting of grove—Duty to show details of trees in valuation statement.*

When the property valued consists of groves, the details of the trees valued should be shown in the valuation statement to enable the Collector or the Board in appeal to see if the valuation was approximately correct (*Darling, S M and Bomford J M*) **BALMAKUND v. CHANGER**
1937 R D 411.

—Ss 3 and 4—*Transfer of whole share of judgment debtor when 11/12ths of his share will suffice to meet decree—Propriety.*

Where owing to a wrong valuation, the whole share of a judgment debtor is transferred by the Collector when it will suffice to transfer 11/12ths of his share to meet the transfer even if the revised judgment. the policy of Government to transfer as small an area as possible in satisfaction of decree (*Darling S M and Bomford, J M*) **MUNESHAH SINGH v. RAN BECHAN RAI**.
1937 R D 341.

—Ss 3 and 4—*Transfer—Who can set aside*
An order of transfer can only be set aside by the order of the Board (*Darling, S M and Bomford, J M*) **SANRAJ SINGH v. HARI KISHUN DAS**
1938 A W R (B R) 212 =
1938 A L J 71 (Supp) = 1938 R D 678.

—S. 3—*Valuation—Basis—Sir lands*
For purposes of the U. P. Regulation of Sales Act, the valuation of Sir lands should be made at statutory rate and not at occupancy rate (*Darling S M and Bomford, J M*) **AMAN SINGH v. RAMJI LAL**
1938 R D 329 = 1938 A W R (B R) 173.

—Ss 3 and 4—*Valuation made—No bid—Amendment of decree by Civil Court—Forwarding of decree to Collector—Regulation of Sales Act no longer in force—Old valuation if could be retained*

Where a valuation was made under the Regulation of Sales Act and as there was no bid the file was returned to the Civil Court, and where the decree was subsequently amended and sent to the Collector once again for execution, the proceedings are to all intents the same proceedings as those commenced earlier. So though the Regulation of Sales Act was not in

under the old the calculation (*Darling, S M and UDEY*)
1938 A W R (B R) 365.

be made annually their due should be (*nor, J M*)

RAN CHANDER v. ROSHAN SINGH
1937 R D 380 (1)

not be able to set aside the order passed but he could at least make a reference to the Board. (*Darling, S M*)

U. P. REGUL. OF SALES ACT (1934), S. 3.

S 3—Valuation—Rules as to—Sir fields—Deduction from recorded rent—If satisfied—Khattas in possession of mortgages—No gross return—Calculation of value at 50 times land revenue—Proportion—

and not on the basis of 50 times Land revenue. The Act lays a duty on the Collector to determine the valuation, and not to accept any figure given by the appellant. (*Darling, S. M. and Bamford, J. M.*) **FAUJADAR SINGH v. SUBHADRA KUER.**

1933 B.D. 60—1933 A.W.R. 10 (B.R.).

S 3—If valuation—Interference by Board—Though notice served judgment-debtor not caring to appear—Transfer of property to decree-holder—Revision—Competency.

Where though the notice to contest the valuation was served, a judgment-debtor does not care to appear and where the property is transferred to the decree-holder in satisfaction of his decree, and though the valuation was patently wrong, the Board will not interfere in revision. People who ignore the notices of Court should suffer the consequences. (*Darling, S. M. and Bamford, J. M.*) **AMAN SINGH v. RAMJI LAL.**

1933 B.D. 323—1933 A.W.R. (B.R.) 173.

S 3 (3)—Consideration of valuation—Vice for—Service—Advantage—Bona fides—Test—Consideration.

While there is no doubt that the service of notices under the Regulation of Sales Act is often very slack and also dishonest, it is equally notorious that judgment-debtors who have no case at all try to avoid the service with a view to prolong the proceedings. Therefore if there is no *prima facie* reason for the decree-holder to attempt to get the property by dishonest means, there is the less reason to suspect the bona fides of the process server's report and the more reason to scrutinise the conduct of the judgment-debtor. (*Darling, S. M. and Bamford, J. M.*) **RAM PALTAN MISHRA v. BASUDEO SINGH.**

1933 B.D. 78—1933 A.W.R. 32 (B.R.).

S 3 (3)—Scope—Non compliance—Effect on sale—Proof of loss as a result of material irregularity—Necessity.

a case is not bound to prove that loss has accrued to him as a result of the material irregularity. (*Darling, S. M. and Bamford, J. M.*) **CHHEDI SHUKUL v. SATRAM**

can't be allowed to re-open the matter in revision. (*Darling, S. M. and Bamford, J. M.*) **PARKALI KUER v. RAJA RAM MALL.**

1933 A.W.R. (B.R.) 285.

S 3 (4)—Valuation by Assistant Collector—Appeal—Forum.

Where the Assistant Collector makes a valuation under the Regulation of Sales Act, under S. 3 (4) of the

U. P. REGUL. OF SALES ACT (1934), S. 3.

Act an appeal against it lies to the Board of Revenue and not to the Collector. (*Darling, S. M. and Bamford, J. M.*) **SHIB NANDAN v. UDEY RAM.**

1933 B.D. 453—1933 A.W.R. (B.R.) 265.

cular amount.

Held, that it is an erroneous order and that it was the duty of the Assistant Collector in such case to transfer the property to the decree-holder in full satisfaction of his claim. (*Darling, S. M. and Bamford, J. M.*) **FAUJADAR SINGH v. SUBHADRA KUER.**

1933 B.D. 60—1933 A.W.R. 10 (B.R.).

S 4 (a)—Valuation of land at less than decree—Right of decree-holder to take such land in part payment of decree.

Under S. 4 (a) of the Regulation of Sales Act, the decree holder is entitled to take the land valued at less than his decree only in full discharge of his decree with its encumbrances and interest. He cannot take the land up to its valuation in part payment of his decree. (*Darling, S. M. and Bamford, J. M.*) **JAGRO SINGH v. MAHARAJ SINGH.**

1937 B.D. 587.

S 5—Order transferring property—Review—Power of Collector to set aside—Proper procedure.

A Collector has no power to set aside on review an order transferring the property to the decree-holder under S. 5 of the U. P. Regulation of Sales Act. If he thinks that it should be set aside, he should report to the Board of Revenue in revision. (*Darling, S. M. and Bamford, J. M.*) **MAHABIR SINGH v. LALTA SINGH.**

1933 B.D. 115—1933 A.W.R. 67 (B.R.).

S 5—Order under, after presentation of application under S. 4 of the Encumbered Estates Act, but before order under S. 6—Effect—Stay under S. 7 of the Encumbered Estates Act when comes into operation.

Where an order under S. 5 of the U. P. Regulation of Sales Act, transferring property of the judgment debtor of an application under S. 4 of the Encumbered Estates Act but before an order under S. 6 of the Act is passed, the order under the Regulation of Sales Act cannot be

there was great delay in of the Encumbered Estates Act cannot come under S. 6 of the Act had S. M. and Bamford, J. M.) **RANCHAN PRASAD v. HANSI.**

1933 B.D. 363—1933 A.W.R. (B.R.) 199.

S 5—Review—Order of transfer—Appeal to—Ground—Application to Collector for review—

tion for review of an order under S. 5 of regulation of Sales Act transferring the property to the decree-holder will lie, when an appeal has been preferred to the Board of Revenue. (*Darling, S. M. and Bamford, J. M.*) **MAHABIR SINGH v. LALTA SINGH.**

1933 B.D. 115—1933 A.W.R. 67 (B.R.).

S 5—Simple and later mortgage decree against same judgment debtor—Preference in order of sale, if exists—Decree on mortgage subsequent to sale under simple money decree—Postponement of sale—Transfer to mortgage decree-holder without notice to prior decree-holder—Validity—Proper procedure.

U. P. REGUL. OF SALES ACT (1934), S. 10.

Where after the postponement of a sale under a simple money decree, a decree on a mortgage is passed against the same judgment debtor, the property once sold cannot be transferred to the later decree-holder without notice to the prior decree holder. The second decree holder cannot have preference in the order of sale, though there might have been a mortgage of the property in his favour—If the proceedings in the two decrees are to be taken together, then the earlier decree-holder ought to be given notice of the later decree and proceedings thereon—Otherwise the person first in the field is entitled to have his decree dealt with by the ordinary sale procedure. (*Darling, S. M. and Bomford, J. M.*) SAHE

1938 E.D.
—S 10—*Apple*
nom for discharge b

It would seem the Regulation of Sales which there is an explicit provision for the subsequent mortgagee discharging the first mortgage. (*Darling, S. M. and Bomford, J. M.*) SAHEBZADA MAL v KAUL-BAN MAL.

1938 E.D. 433 (2)=
1938 A.W.R. (B.R.) 342
UNITED PROVINCES REVENUE MANUAL.
Para. 223—*Plot proprietor—If a co-sharer qualified to be appointed lambaradar.*

A plot proprietor is not a co-sharer within the meaning of the rule in Para. 223 of the Revenue Manual and

holding an interest—Co sharer—Right of to apply to set aside sale

In order to give a co sharer a right to

Contingent inter
M) THAKUR

—Paras

Competency—Execution proceedings governed by O 21, C. P. Code. *See AGRA TENANCY ACT, S 248 (3)*

1938 E.D. 254.

UNITED PROVINCES STAMP (AMENDMENT) ACT (1936), S 6 A (2)—Powers of Court to give time.

Where a document is improperly stamped, under the

U. P. TEMP. REGUL. OF EXECUTION ACT (1934), S. 7.

taken under S. 92 and, therefore, it falls under Serial No. 11 of Group III of the IV Sch. of the Stay of Proceedings Act. Hence all execution proceedings in such suits are stayed by the Act. (*Darling, S. M. and Mehta, J. M.*) HOLDSWORTH = ZAMINDAR CHAUDHARI.

1938 E.D. 801=1938 A.W.R. (B.R.) 391.

U. P. SUGAR CANE RULES (1936), Rr. 9 and 11
—*Two persons charged under—Trial and conviction of one—If bars conviction of the other subsequently*

Where though two persons were charged under Rules 9 and 13 of the U. P. Sugar Cane Rules, only one of them was tried and convicted, as the other had dis-

—R 13 (1) (i)—*Interpretation—Registers and records—If should be kept at purchasing centre.*

What Sub R. (1) (i) of R. 13 of the Sugar Cane Rules means is that all the registers and records as required by R 11 (7) shall be kept at the purchasing centre and shall be "made available" which means shall be produced for inspection when asked for by the

S 8—*Procedure—Benefit of Act—If to be given to all*

GAYA BUX SINGH I.L.B. (1938) All. 226=

1938 E.D. 140=174 I.C. 80=1938 A.L.R. 234=

10 E.A. 545=1937 A.L.J. 1387=

1938 A.W.R. 20 (H.C.)=A.I.R. 1938 All. 134

—S 7—*Period for payment—Power of Court to extend*

Under S 148, C. P. Code, and also in the exercise of

Sch IV Group B, Serial No 11—*Applicability—Suit under S 86, 205 of Agra Tenancy Act*

Where a suit for ejectment is brought under S 86 read with S. 205 of the Agra Tenancy Act, action is

1938 A.W.R. (C.C.) 5=1938 E.D. 88=

172 I.C. 515=1938 A. 23=10 B.O. 177=

1937 O.W.N. 1533=1938 O.L.B. 6

A.I.R. 1938 Oudh

U. P. TEMP. REGUL. OF EXECUTION ACT (1934), S. 7.

S. 7—Period of thirty days—When commences.
Under S. 7 of the U. P. Temporary Regulation of Execution Act, the maximum period of thirty days which can be allowed by the Court for payment of the 25 per cent. of the amount due under the decree means thirty days from the date of the order, and not thirty days from the date of the application. (*Srivastava, C. J. and Hamilton, J.*) AMBIKA PRASAD v. VIJAYHVA PRASAD. 11 Luck 666=1938 A W R. (C.C.) 5=1938 R. D. 68=172 I O 515=1933 B A 177=1937 O W N. 1233=1938 O L R 6=1938 Oudh 50.

UNITED PROVINCES TOWN AREAS ACT (II OF 1914) S. 3(2)—Scope and effect of—Declaration by Government—If conclusive for purposes not connected with Act—Finality on question of right of occupier of house to transfer right of occupation.
Any area included in a town area: Local Government under S. 3 of the Act may be final and conclusive, but such finality under S. 3 (2) is only for the purposes of the Act. Where

the Local Government under S. 3 of the Act may be final and conclusive, but such finality under S. 3 (2) is only for the purposes of the Act. Where the Local Government under S. 3 of the Act may be final and conclusive, but such finality under S. 3 (2) is only for the purposes of the Act. Where

On the point the declaration of the Government cannot be taken as conclusive for purposes other than those of the Act. (*Nizamuddin, J.*) MATHURA PRASAD v. BHOLA NATH. 174 I O 433=1938 R. D. 233=1938 A L R 272=10 B A 575=1937 A L J 301=1937 A I R 144

UPPER BURMA LAND AND REVENUE REGULATION (1889), Ss 25 and 53 (1)—Ejection of occupier in possession of state land—Procedure—Lessee from government of state land—Position and powers of—Right to eject person in occupation prior to his lease—Jurisdiction of Civil Court to entertain suit for ejection of such occupier.

The Upper Burma Land and Revenue Regulation confers certain powers on the Government. It provides by S. 25 that the Government may eject a person from state land may certain circumstances those circumstances not devolve on a lessee of state land. Nor can a Civil Court exercise these powers, for S 53 (1) of the Regulation bars the jurisdiction of Civil Courts in such matters. A lessee of state land cannot sue to eject an oc-

USURIOUS LOANS ACT (1918), S. 3.

or in the conditions of the license issued under the rules, which gives the Inspector of Mines authority to prohibit a person from digging his mine and allowing the debris to fall out. The "other matters" referred to in R. 17 do not appear to include matters of this kind, or else surely some provision would have been made for the enforcement of the Inspector's orders. According to R. 18 the orders are of the kind that a Revenue Officer can pass under the Upper Burma Land and Revenue Regulation, 1889, and the word "order" as here used does not appear to mean a command but a "decision." S. 188, I P Code, could not possibly apply to orders of the Inspector of Mines passed under R 17 P and G were each digging for precious stones by working mines of the kind called lu and G complained that debris from P's lu dropped into his lu. Inspector of Mines and Sub-Divisional Officer inspected the locality and came to the conclusion that P should be prohibited from passing debris into G's lu. The Inspector of Mines issued an order by P for which he was held liable. On revision.

Held, that the Inspector of Mines had no authority to issue such an order. There does not appear to be any provision under the Upper Burma Land Regulation or Rules which authorizes the Inspector of Mines to issue such an order. The order was void. 701=1938 R. D. 233=1938 A L R 272=10 B A 575=1937 A L J 301=1937 A I R 144

(XI of 1934) is not retrospective in operation so as to enable the Court to exercise wider powers to re-open loan transactions made before the 15th June, 1934, at any rate when the amount due under such a loan has become the subject matter of a litigation instituted before that date. (*Stone, C. J. and Digby, J.*) BHAGWANTRAO v. DANGDAR. 11 Luck 666=1938 A W R. (C.C.) 5=1938 R. D. 68=172 I O 515=1933 B A 177=1937 O W N. 1233=1938 O L R 6=1938 Oudh 50.

USURIOUS LOANS ACT (X OF 1918) S. 3—'Excessive' meaning of—Interest at 12% compound interest in Bihar—If excessive

'Excessive' is explained to mean, excess of that which the Court deems reasonable having regard to the risk at

4 B R 401=10 R P. 493=A. I R. 1938 Pat. 324=1938 R. D. 233=1938 A L R 272=10 B A 575=1937 A L J 301=1937 A I R 144

S 3 as amended by S 5 of Punjab Act VII of 1934) Prior and subsequent mortgage—Considera-

allowing debris to fall out—Disobedience—If punishable—Penal Code, S. 188.

Under R. 17 all disputes arising between native miners as to sites or other matters shall be decided by the Inspector of Mines, but there is nothing in the rules,

ent. The mortgagee brought a suit on the second mortgage.

Held, that in these circumstances the two transactions were independent of each other and the mere fact that the consideration for the second transaction was the

USURIOUS LOANS ACT (1918), S. 3.

amount due on the first, would not make them one transaction. Hence it was permissible to the Court to re-open account of mortgage transaction of 1930 under S. 3 of the Act as that mortgage and the mortgage in dispute were two independent transactions.

Held, further, that the suit was not brought on a

—S. 3—(as amended by U. P. Amendment Act of 1934), —Scope and effect—Relief to debtor—Limits.

As the local legislature has by the U. P. Usurious Loans (Amendment) Act of 1934 laid down the specific principles on which the Court is to decide whether the interest is to be allowed or not, it is not necessary to be guided by the original Act. The original Act is that the Court can now relieve the debtor of liability in respect of excessive interest not only when the interest is excessive and the transaction was substantially unfair but also where either the interest is excessive or the transaction was substantially unfair. (*Thomas C. J. and Zia-ul-Hasan, J.*) **RAM VARAIN v. CHANDRIKA PRASAD.** 175 I O 50 =

10 R O 307 = 1938 A W R (C) 51 = 1938 E. D. 567 = 1938 O L R 259 = 1938 O A 434 = 1938 O. W. N. 535 = A. I. R. 1938 Oudh 156

—S. 3 (1) (ii) —Operation of

The words "Notwithstanding any agreement, purporting to show previous dealings and to create a new obligation" in S. 3 (1) (ii) of the Usurious Loans Act

VENDOR AND PURCHASER—Contract of sale—Payment of deposit—Effect—Breach—Right to return of deposit—Principles. See **CONTRACT ACT S. 73**

1937 M W N 1288

WAJIB UL ABZ—Construction—Exclusion of daughter

wedded wife his relations and other persons having a right will get property."

Held that no mention having been made of daughters, daughters were meant to be altogether excluded from inheritance and that they were not included in "relations and other persons having a right." (*Thomas C. J. and Zia ul Hasan, J.*) **JUDHWATI v. RAM SINGH.** 173 I C 972 = 1938 O W N 338 =

1938 M L R 162 = 1938 R D 410 = 10 R O 242 = (1938) A W R (C) 37 = 1938 O A 251

—Construction—Inferential construction—It permissible. See **LANDLORD AND TENANT**—ABADI 1938 M W N 500

—Construction—"Lawful"—Meaning

On a construction of the 2nd para. of the Wajib ul arz concerned, it was held that there was no reason to give the word the meaning of 'lawful'. (*Thomas, C. J., Zia*

WATER RIGHTS.

ul-Hasan and Hamilton, J.) **RACHURAI v. BINDRA PRASAD.** 175 I C 32 = 1938 O L R. 252 =

10 E. D. 294 = 1938 R. O. 575 = 1938 O A 447 = 1938 O. W. N. 547 = A. I. R. 1938 Oudh 140 (F. B.).

—Construction—Rules of—Construction consistent with personal law

It is a well established rule of law that custom in derogation of the personal law of the parties must be strictly proved, and so far as possible Wajibul arzs must be construed in such a manner as to make them consistent with the provisions of the Hindu Law. (*Thomas, C. J. and Zia-ul-Hasan, J.*) **JUDHWATI v. RAM SINGH.** 173 I C 972 = 1938 O W N 338 =

1938 O L R. 162 = 1938 R D. 410 = 10 R O 242 = 1938 A. W. R (C) 37 = 1938 O A 251.

consulting the zamindar. (*Darling, S. M. and Bonford, J.*) **NANHI DULLAIA v. RAM PRASAD.** 1937 E. D. 598.

—Construction—Widow's right—Custom giving her power to transfer in favour of nearest reversioners—Alienation in favour of person other than reversioner for legal necessity—Validity.

Where the custom recorded in the Village Wajibul arzs states that the widow has power to transfer her husband's share to her nearest reversioners and has no power to transfer it to anybody else it does not prohibit alienation for legal necessity. Though a widow can make an alienation in case of legal necessity she can do so only to one of the nearest reversioners of her husband. Consequently an alienation who is not such a reversioner or not it is made for legal necessity. (*J.*) **AYUB KHAN v. INDAD** 173 I C 972 = 1938 O W N 288 =

10 R O 242 = 1938 A. W. R (C) 37 = 1938 O A 251.

—Evidence in—Evidence of—Entry not corroborated by instances.

An entry as to the existence of a custom in a wajibul arz even when it is not corroborated by instances is a strong piece of evidence in support of that custom. (*Bhade, J.*) **RATI RAM v. SHERA RAM**

less, but no attempt was made to correct nazal record, it is open to government under Ss 21 and 23 of the Waste Lands (Claims) Act to relinquish possession, if it had been taken. (*Roughton, F. C.*) **R. v. B. V. BUTT** 1938 N L J 268.

WATER RIGHTS—Inam village—Irrigation tank—Duty of inamdar—Right of ryots to water—Nature of assignment by inamdar of part of tank bed—Suit by ryots—Competency—Special damage—Proof of

It is no doubt the duty of an inamdar to preserve and maintain the tank in the inam village as a tank for the purpose for which it is intended. So long as the tank subserves the purposes of an irrigation tank, he ought not to do anything which might in any way interfere with the right of irrigation which the ryots owning land in the tank ayatut have. The right of the Kudi tenants in an inam village is more in the nature of a proprietary right annexed to the ownership

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parties in case the son predeceased wife. It was contended that these that the testator did not intend would vest in the son immediately on the happening of an uncertain event being alive after the death of the testator.

Held, that under the terms of the vested interest in the properties on the death of the testator. (*S.K. Ghose and Naum Ali, JJ.*) **SISIR CHANDRA MAITRA v. AJIT KISHORE MAITRA.**

177 I.C. 764 = 11 B.C. 273 - 68 C.L.J. 82 = 42 C.W.N. 605 = A.I.R. 1938 Cal. 466.

—Construction—Will in favour of wife and daughter—Nature of interest conferred.

A will provided that after the death of the testator and even in his lifetime in case he ceased to be in possession of his senses, the wife should have proprietary possession over all the property and enter into proprietary possession and she should be entitled to and be owner of all the property. If a son should be born to the testator from his wife he should be entitled to the estate on attaining majority and should supervise and possession of the estate. Should no son be born, the daughter was to be owner of and entitled to the whole estate generation after generation after her mother.

Held, that the wife was given only a life-interest and absolute interest was given to the daughter. (*Zia ul-Hasan, and Hamilton, JJ.*) **SRI RAN V. MAHOMED ABDUL KAHIM KHAN.** 172 I.C. 882 = 1938 O.L.B. 41 = 1938 O.A. 86 = 1938 O.W.N. 67 = 10 B.C. 200 = A.I.R. 1938 Oudh 69

—Execution—Validity—Testator signing mark—His hand guided by another. See SUCCESSION ACT.

—Executor and to direct him, to deposit any amount in Court. (*M.C. Ghose, J.*) **PROMOTHANATH DUTTA v. GOURDAS MAHATO**

174 I.C. 951 = 10 B.C. 739 (2) = 66 C.L.J. 386 = A.I.R. 1938 Cal. 294

—Executor—Refusal to accept office—Effect—Vesting of estate—Heir at law—Right of suit of Limitation Act, S. 17—Legal representative—If includes heir.

There is nothing to preclude an heir-at-law from maintaining an action in ejectment or otherwise recovering possession of the estate left by a testator where the executors appointed under the will of the testator decline to accept office. The entire estate, both movable and immovable property left by the deceased must be deemed to vest in the heir at law until an administrator is duly constituted. The heir at law, if he likes, can get himself appointed administrator, but he is not bound to do so. It is open to legatees to have an administrator duly constituted; and as soon as an administrator is constituted, the estate would be divested from the heir at law, and the person competent to maintain a suit on behalf of the estate would then be such administrator. According to the plain language of S. 17, Limitation Act, "legal representative" would also

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—Executor assenting to it—If becomes trustee.

If there is a specific bequest to the executor himself on trust and he assents to it, the executor becomes a trustee for those who are beneficially interested. He is thereupon precluded from dealing with the thing bequeathed or making title as executor. (*Amir Ali, J.*) **CHARU CHANDRA GHOSE v. BANKIM CHANDRA SETT.** 42 C.W.N. 1115.

—Executor—Status of—When trustee.

The persons named executors in a will were not merely executors but were charged with the duty of managing the property and paying the income to charity. Only the income was disposed of under the will.

disposed of, and some corpus, and taking upon the executors and also the possibility of having successive legal estates, the executors were in all but name trustees. (*Ramesam and Stone, JJ.*) **VENKATASUBRAMANIAM AYYAR v. SIVAGURUNATHA CHETTIAR.**

A.I.R. 1938 Mad. 60.

—Grant of probate—Onus of proof.

The onus probandi lies in every case upon the party propounding a will, and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. If a party writes or prepares a will under which he takes a benefit,

SOOF AHMED v. ISMAIL AHMED. 178 I.C. 155 = A.I.R. 1938 Rang. 322.

—Probate Court—Duty of—Locus standi of objector—Determination—Procedure—Preliminary proceedings—Framing of issue after taking of evidence—Propriety.

An issue on the question of the locus standi of an objector to contest the proceedings for the grant of a probate, is an issue which ought to be tried and determined as a preliminary proceeding. It is quite wrong to frame such an issue after the examination of all the relevant witnesses. (*Mukerji and S.K. Ghose, JJ.*) **HARIB SHAH v. PATIA DASJI.** 175 I.C. 920 = 11 B.C. 14 = 66 C.L.J. 337 = A.I.R. 1938 Cal. 280.

—Probate Court—Enquiry by—Scope of.

A Court of probate is not a Court of probity, and the Court has not to ask whether the testatrix bequeathed her property as they think she ought to have done. If the propounders prove the bona fides of the transaction and there are no circumstances suggesting suspicion, probate can be granted. (*Barbery and Morley, JJ.*) **SAW YAW BA v. SAW RA MAUNG.** 177 I.C. 382 = 11 B.C. 118 = A.I.R. 1938 Rang. 251.

—Probate—Granting of—Considerations.

In connection with the question as to whether probate should or should not be granted, probability is not the main thing to be considered by a Court. It has to be satisfied as to whether the will was, as a matter of fact,

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executed and if so executed whether it was by a free, capable and willing testator. (*Mukerji and S. K. Ghose, J.J.*) GARIB SHAH v. PATIA DASSI.

175 I.O. 920-11 B.O. 14-66 O.L.J. 337-A.I.R. 1938 Cal 290

—*Probate Court—Provision of—Question whether a provision in a will takes effect immediately—Validity or otherwise of other provisions.*

A Court of probate cannot entertain questions as to whether some of the provisions of a will would take effect immediately, or whether other provisions contained in it are valid or otherwise. These will have to be determined if proper proceedings are started for the construction of the will. (*Mukerji and S. K. Ghose, J.J.*) GARIB SHAH v. PATIA DASSI. 175 I.O. 920-11 B.O. 14-66 O.L.J. 337-A.I.R. 1938 Cal 290.

of will or of existence of will

—*Proof of valid execution—*

Petitioner applied for revocation of probate granted to the respondent as in an intestacy and for a grant of probate to herself of a will alleged to have been made by her deceased. In evidence a copy of the copy was in the handwriting of the purported to contain a copy of the testator, with the words "signed" names of attesting witnesses were for was no indication at all as to whether the attesting witnesses ever did attest as to their identity due execution of the evidence as to whether the date of the testator's death.

Held, that the valid execution of been proved and that the Court could not on the materials presume a valid execution of the will in the absence of proof that the contemplated formalities were completed. (*Wadsworth, J.*) ALAMELU AMMAL v. PARTHASARATHI NAIDU. 47 L.W. 31-1938 M.W.N. 149-A.I.R. 1938 Mad 326-(1938) 2 M.L.J. 95

1938 M.W.N. 149-A.I.R. 1938 Mad 326-(1938) 2 M.L.J. 95

—*Proof of—Omission to call to Effect.*

The omission to call the writer of and to examine him is not anything the other witnesses have been examined given convincing evidence. (*Mukerji J.J.*) GARIB SHAH v. PATIA DASSI. 175 I.O. 920-11 B.O. 14-66 O.L.J. 337-A.I.R. 1938 Cal. 290.

—*Proof of—Onus—Suspicious circumstances—Duty of applicant for probate.*

The burden to show that the will, the probate of which is sought, is the last will of a free and capable testator lies on the person applying for the probate, and if there are any suspicious circumstances attending the execution of the will, the burden is on the petitioner to explain those circumstances. Where the testator is a man advanced in years and in extremely feeble state of health and where the disposition evidenced by the will runs counter to those admitted by him by previous wills executed, the heavier on the applicant. (*Amal and Imal, J.J.*) MRS MAUD MARTIN, I.

1938 A.L.R. 342-1938 A.L.J. 97-A.I.R. 1938 All. 201.

Y. B. 1938-89

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—*Proof of—Reasonable natural and probable terms—Suspicious circumstances—Effect on probabilities.*

Mere suspicion, cannot render a will improbable, which is otherwise reasonable, natural and proper in its terms. It is not in accordance with sound rules of construction to apply to such a will, those canons of construction which demand a rigorous scrutiny of documents of which the opposite can be said, namely that they are unnatural, unreasonable or tinged with impropriety. (*Adams and Din Mahomed, J.J.*) KESHO RAM v. PANNI LAL. 40 P.L.R. 4.

—*Revocation—Mahomedan testator—Registration of original will—Communications to solicitors to draft a codicil as per his instructions—Codicil not completed—Whether communications operate as codicil and revoke part of his will.*

upon the draft.

Held, that it is quite possible that a letter by a

draft, that the solicitors should draw a proper draft of communications communicated and codicil formally. (*Wadsworth, J.*)

A mere expression of an intention to revoke a will at some future date cannot amount to a revocation of the will under any system of law. (*Wadsworth, J.*) MAHOMED YOUSUF v. ABDUR SATTAR ISMAIL.

47 L.W. 719-1938 M.W.N. 699-A.I.R. 1938 Mad 618-(1938) 1 M.L.J. 444

—*Testamentary capacity—Proof required—*

testator when he is midway between consciousness and unconsciousness, is that he should be capable of understanding that he is engaged in executing the will for which he had given instructions to the lawyer. It is unnecessary to place before the testator all the various alternatives or the details of the will that he desired to make. It is sufficient if the general tenor of his dispositions is placed before him. (*McNair, J.*) AMULYA KUMAR ROSE, In the Goods of. 42 O.W.N. 619.

—*Will made by sick and dying person—Degree of understanding required.*

Wills are too frequently made by the sick and dying, which the law expects from enough that a testator's usual ques

as condition

WIRELESS TELEGRAPHY ACT (1933) S. 3.

the objects of his bounty, as to the nature of the instrument which he executes and as to the general nature and general objects and the provisions which it contains; if he can do that, though he may be very feeble and delugated in understanding, and be at the point of death, it is enough. (*Kabir, C. J. and Danley, J.*) LUSOOF AHMED v. ISMAIL AHMED. 178 I.O. 165—

A.I.R. 1938 Rang. 322.

WIRELESS TELEGRAPHY ACT (XVII OF 1933), Ss. 3 and 6—*Wireless set without licence—Offence—Subsequent issue of licence to take effect from date earlier than date of offence—Effect—Conviction—If justified—Separate conviction and sentence under Telegraph Act—Sustainability.*

The accused was convicted under Ss. 3 and 6 of the Wireless Telegraphy Act, 1933. It appeared that the accused had been taking out licences for some years before the offence and that actually a licence had been issued by the post-master to take effect from a date earlier than the date on which the accused was said to have been in possession without a licence.

Held, (1) that the accused was guilty of an offence under Ss. 3 and 6 of the Wireless Telegraphy Act and that the issue of a licence subsequently would not give a sort of pardon in respect of an offence already committed; (2) that there was no justification for a separate conviction under S. 20 of the Telegraph Act or for a separate sentence under that section.

Quære: Whether the use of a wireless set without a licence would amount to an offence under S. 20 of the Telegraph Act. (*Punarang Awo, J.*) A. S. PANDIAN v. YAPAKOR. 48 L.W. 330—178 I.O. 69—

30 Cr.L.J. 991—1938 M.W.N. 823—

A.I.R. 1938 Mad. 821—(1938) 2 M.L.J. 281.

Not necessarily confined in legal duty—Medical officers bound to obey the rule in the medical code made for their guidance. *See GOVERNMENT OF INDIA ACT (1919), S. 270.* 40 Bom.L.R. 825.

Hasah rasid khawar—Meaning of.

“In his own right”—Meaning of. *See BOMBAY LOCAL BOARDS ACT, S. 15 (2).* 40 Bom.L.R. 525.

Mookassa and Vrittee—Meaning of. *See LAND TENURES—MOOKASSA AND VRITTEE TENURES* 1938 N.L.J. 112.

“Misappreciation” and “misapprehension.” *See EVIDENCE.* A.I.R. 1938 Nag. 394.

“Police Officer.” *See EVIDENCE ACT, S. 25.*

“Privilege” and “Right.” *See INTERPRETATION OF STATUTES.* [A.I.R. 1938 Rang. 130 (F.B.).]

Pukhtadar—Meaning of.

WORKMEN'S COMP. ACT (1923), S. 2

Pukhtadar is generally taken to be a translation or the equivalent of sub-settlement holder, but the word is vaguely used by people who have all sorts of fancy rights and comes to mean little more than heritable and transferable rights. (*Drake, Breckman, S. M. and Anor, J. M.*) JAGUNATH SINGH v. MUHAMMAD AHMAD ALI KHAN. 1938 R.D. 291(2)—

1938 A.W.R. (B.R.) 329(2).

“Purchase”—If includes compulsory acquisition. *See BOMBAY MUNICIPAL BOROUGHS ACT, S. 114.*

39 Bom.L.R. 1257.

Saragis—Meaning of.

The word *Saragis* is only another general word for Jain. (*Wenon, J.C.S.*) CHANDI KOSK v. PUN RAJ. 1938 A.M.L.J. 79.

“Member of Bombay” —“Member of the Crown.” ACT (1919) S. 270.

40 Bom.L.R. 825.

“Talia” *See* MUHAMMEDIAN LAW—“TANIA.” A.I.R. 1938 P.C. 202—(1938) 2 M.L.J. 229 (P.C.).

“Talukdar and heir to Taluk” in Bannals. 1938 B.A. 353.

“Timber”—If includes “flywood.” *See BOMBAY CITY MUNICIPAL ACT, S. 394.* 40 Bom.L.R. 322.

“Uto and to the use of” in conveyance meaning. *See DEATH.* 42 C.W.N. 937.

WORKMEN'S COMPENSATION ACT (VIII OF 1923)—*Commissioner appointed under—Power to award arrears of pay as compensation.*

The Workmen's Compensation Act prescribes compensation to be paid in certain circumstances. It is not open to the Commissioner to award any damages or any other compensation except that provided by the Act. Hence arrears of pay cannot be granted by him as compensation. (*Simail, J.*) JAGANNATH BIKI RAJ v. SOEMNAN. 1938 A.W.R. (H.C.) 684—1938 A.L.J. 1007.

S. 2(1)(4)—*Widow remarrying after husband's*

THE KHULNA ELECTRIC SUPPLY CORPORATION, LTD. v. BAHADUR SARDAR. 42 C.W.N. 516—

68 C.L.J. 467.

S. 2(1)(4) (ii)—*Partial dependency of father and mother—Question of fact.*

The question whether the father and the mother were dependent on the earnings of the father. Consequently the father and the mother are dependants and entitled to some portion of the compensation money payable under the Act. (*Derbyshire, C.J. and Mukherjee, J.*) THE KHULNA ELECTRIC SUPPLY CORPORATION, LTD. v. BAHADUR SARDAR. 42 C.W.N. 516—68 C.L.J. 467.

S. 2(1)(e)—*Employer—Person getting labour supplied by another.*

If a person who is responsible for the putting up of a building gets workmen supplied by a Sirdar and pays them through the Sirdar, he and not the Sirdar is the employer of the workmen for the purposes of the Workmen's Compensation Act. (*Derbyshire, C.J. and*

WORKMEN'S COMP. ACT (1923) S. 2.

Mukherjee, J. KALOO & SONS v. OFATANNESSA
BIBI.

—S. 2 (1) (n)—Construction—Was
on wages per day—If "workman" under

The expression "monthly wages not
hundred rupees" in S. 2 (1) (n) of
Compensation Act means wages which do not exceed on

only so as to exclude workman employed by the day or
by the week or by the year. A workman employed on
certain wages per day is

(*Beaumont, C. J. and Sen.*)

HALL LINKS v. ASIS THO

LLR. 193.

10 B B

A.I.R. 1938 Bom 110

—S. 2 (1) (n)—Not permanently employed—
Meaning of

The expression "not permanently employed" in
any office of a railway" in S. 2 (1) (n) of the Act con-
templates such servants as are not required to perform
their duties continuously or habitually in the office, that

is to say, in-
work in the
"permanent"
concrete appl
in any office"
does not mea

"engaged" as
engaged". Accordingly a railway
the course of his employment, to d
going round on his bicycle to deliv
a servant who is not continuously or
in the office, and therefore he falls
of the definition of workman in S. 2 (1) (n) of the Act,
although he is permanently employed in the office
(*Niyogi, J.*) SECRETARY OF STATE v. GRETA.

172 I O 705—10 B N. 244—A.I.R. 1938 Nag. 91

—S. 2 (1) (n)—Person employed casually—If a
workman

A person who was employed in the trade or business
of the employer does not cease to be a workman within
the meaning of the definition, even though the
ment was of a casual nature. In order to be
from that definition, the workman must both
ployment of a casual nature and be employed o
than for the purposes of the employer's
business, (*Derbyshire, C. J. and Mukherjee, J.*) THE
KHULNA ELECTRIC SUPPLY CORPORATION, LTD v.
BAHADUR SARDAR. 10 C.W.N. 516—68 O L J 467.

—S. 2 (1) (n)—Word "administrative"
fits "District or Sub-Divisional office".

The word "administrative" in S. 2
is not an adjective qualifying "district or sub-
Divisional office". (*Niyogi, J.*) SECRETARY OF
STATE v. GRETA.

172 I O 705—
10 B N. 244—A.I.R. 1938 Nag. 91.

—S. 2 (1) (n) and Sch. II (1)—Workman—Con-

WORKMEN'S COMP. ACT (1923), S. 3.

PORT, LTD. v. ARUNUGA KOUNDER.

during a halt in the voyage.

employed on a steam launch
age. In the course of the
made. During that halt
an accident while doing
the boiler as a result of
which he died.

voyage a temporary
aid that the engine
during that halt,
and in the course of
(*Dunkley, J.*) K.

C. NATH v. SALIMA KHATOON.

A.I.R. 1938 Bang. 439.

—S. 3—Accident arising out of and in course of
employment—Facts that go to show.

The deceased was employed in an Electric Supply
Company to put up and change the posts and to connect
and disconnect wires. On the day of accident he was
sent out to disconnect wires from a certain house. While

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course
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178 I O. 549—A.I.R. 1938 Bang. 414.

—S. 3 (1)—Accident "arising out of employment"
—Foundry mantry killed by lightning while running
metal from furnace to chimney.

Where the deceased who was employed as a foundry
mantry was killed by lightning while he was at his work
running metal from a furnace to the bottom of a metal
chimney.

MILLS v. KHANTAMONI DAST.

42 C.W.N. 1093.

—S. 3 (1)—Accident arising out of employment—
Onus.

conjecture, then of course the applicant fails to prove his
case because it is plain that the onus in these matters is
upon him. In a case where compensation was claimed
on the ground that the deceased met with his death at
the hands of an elephant in the course of employment

WORKMEN'S COMP. ACT (1923), S. 3.

Sparg, J.) BOMBAY BURMA TRADING CORPORATION, LTD. v. DAW CHU.

178 I.O. 249—A.I.R. 1938 Rang. 349.

—S. 3 (1)—*Liability of employer—Losses—Disability of worker—Effect—Difference between English and Indian Law*

Where a workman muddles with machinery, will he be forbidden by specific rules to touch, and attempts to effect repairs which are not part of his work, and sustains injuries during the process, he is not entitled to compensation. The English Law is radically different from the Indian Law in this respect. Under the English Law compensation is disallowed, if it is proved that the injury sustained is attributable to serious and wilful misconduct of that workman. But under the Act in force in Burma, the sole question is whether the workman wilfully disobeyed a rule devised for the purpose of securing the safety of workman, and not whether that disobedience amounted to misconduct, serious or otherwise. (*Baguley and Morley, J.J.*) NAUNG HA TUN v. M OHN KHIN.

177 I.O. 626—11 R.R. 151—

1938 Rang L.B. 293—A.I.R. 1938 Rang. 289.

—Ss. 4 and 30—*Principles governing award of compensation—Question of law—When arises.*

The principle on which compensation under the Workmen's Compensation Act is to be awarded has to be determined in accordance with the provisions of the Act and cannot be departed from on grounds of sentiment. Where in the case of a loss of the index and middle fingers of a labourer, compensation is awarded as for loss of the arm below the elbow an appeal against such a decision involves a substantial question of law. (*Jemal, J.*) JAGANNATH BIRI KAI v. BULMIRAK.

1938 A.W.B. (II C) 681—1938 A.L.J. 1007.

—Ss. 8 (4) and 9—*Death of an employer—Allotment of compensation to dependant—Subsequent death of dependant—Employer, if entitled to refund of amount paid.*

It is clear that once an allotment of compensation to a dependant or a distribution of compensation money among several dependants is made, the compensation, so allotted or distributed becomes the property of the dependant and if the dependant dies, the said sum being his property will devolve on his or her heirs right of an employer in get a refund under S. 8 can only arise when a workman dies a dependant. S. 9 has no application to a money has been allotted to dependant on the death of an employee. (*Panditarajama Rao and Abdul Rahman, J.J.*)

I.L.R. 1938 M.W.N. 124—

10 R.M. 592—A.I.R. 1938 Rang. 349.

—S. 9—*Applicability—Allotment made to dependant on death of employee. See WORKMEN'S COMPENSATION ACT, Ss. 8 (4) AND 9.*

I.L.R. 1938 Mad. 718—1938 M.W.N. 124—

47 L.W. 159—(1938) 1 M.L.J. 571.

—S. 10—*'Claim'—Meaning of—Demand by workman to foreman of railway for compensation—Sufficiency.*

A claim within the meaning of S. 10 of the Workmen's Compensation Act is a communication by or on behalf of the workman from which the employer can see that a demand is being made upon him to pay compensation in respect of an accident. In the case of a very large concern like a railway company, a demand by a workman to a foreman for compensation is not a claim within the meaning of the section. (*Darbyshire, C.J. and Mukherjee, J.*) SALAMAT v. THE AGENT, EAST

WORKMEN'S COMP. ACT (1923), S. 23.

INDIA RAILWAY CO. I.L.R. (1938) 2 Cal. 52—42 O.W.N. 341—A.I.R. 1938 Cal. 348.

—S. 10—*Sufficient cause for not instituting claim within six months—What amounts to.*

What amounts to sufficient cause for a workman not instituting a claim within six months of the accident can only be decided in each particular case with reference to the facts and circumstances of that case. Where the workman on returning to work three months after the accident was employed by the same employer in the same workshop at the same rate of wages and he continued in that employment at those wages until long after the period of six months from the happening of the accident had gone by, there was sufficient cause for his not bringing proceedings under the Workmen's Compensation Act within six months of the accident. (*Darbyshire, C.J. and Mukherjee, J.*) SALAMAT v. THE AGENT, EAST INDIA RAILWAY CO.

I.L.R. (1938) 2 Cal. 52—42 O.W.N. 341—

A.I.R. 1938 Cal. 348.

—S. 10—*Workman having sufficient cause for not instituting claim within six months—Act, if passed further time limit.*

When once the workman had, for sufficient cause, not brought his proceedings for compensation within six months of the accident, there is nothing in the Workmen's Compensation Act, the Limitation Act or in any other statute imposing a further time limit for bringing his proceedings. (*Darbyshire, C.J. and Mukherjee, J.*) SALAMAT v. THE AGENT, EAST INDIA RAILWAY CO.

I.L.R. (1938) 2 Cal. 52—42 O.W.N. 341—

A.I.R. 1938 Cal. 348.

—S. 12 (1)—*Contractor—Person supplying labour.*

A person who does not contract to do the whole or any part of the work but merely supplies labour at so much per head, is not a contractor within the meaning of S. 12 (1) of the Workmen's Compensation Act, and the employer has, therefore, no right to indemnity against him. (*Darbyshire, C.J. and Mukherjee, J.*) KALOO & SONS v. OFATANESSA BIBI.

42 O.W.N. 803.

—S. 23—*Order of Commissioner—Revision.*

A Commissioner appointed under the Workmen's Compensation Act and adjudicating a claim made under the Act is a "Court subordinate to the High Court" within the meaning of S. 115, C. P. Code or S. 44, Punjab Courts Act, and a petition for revision lies against an order passed by him provided all the other necessary conditions are present. (*Tek Chand, J.*)

1938 Rang. I.R. 641.

WORKMEN'S COMP. ACT (1923), S. 31.

G. D. GIANCHAND v. ABDUL HAMID.

A.I.R. 1938 Lah. 855

—S. 30—Appeal—Question of law—When arises
See WORKMEN'S COMPENSATION ACT, SS. 4 AND 30.
1938 A.W.R. (H.C.) 684—1938 A.L.J. 1007.

—S. 30—Finding by Commissioner that deceased
was workman—Interference in appeal

Where there is evidence upon which the Commissioner could come to the conclusion that the deceased was a servant and a workman within the meaning of the Act, it would be wrong for the High Court in appeal to disturb his finding although there is some evidence suggesting that the deceased was an independent contr.

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workman within the meaning of the Act (*Costello, A.C. J. and Lethbridge, J.*) NANDA KUMAR SINGH v. PRAMATHA NATH 42 C.W.N. 123

—Sch II (iii)—Construction—"Otherwise adapt-
ing for use, transport, or sale, etc."—Meaning of.

and its closing up and removal constitutes a process which may be adapting it for transport or adapting it for sale. (*Braumont, C.J. and Sen, J.*) SAVLARAM v. SALUBAI.

I.L.R. 1938 Bom. 145=

174 I.O. 427=10 E.B. 450=

40 Bom. L.R. 106—A.I.R. 1938 Bom. 171

(1)

of one and the same business.

to repair boxes containing goods unloaded from ship in port—If workman.

A man employed as a carpenter to mend or repair boxes containing goods which have been unloaded from a ship within the limits of a port is a person employed in the handling of goods within the limits of the port

ZAILDAR.

within the meaning of Sch. II (vi) of the Workmen's Compensation Act, and is therefore a workman. (*Braumont, C.J. and Sen, J.*) ELLERMAN'S CITY AND H.

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although it is a temporary pavilion, (some sort of a flimsy pavilion. (*Derbyshire, C.J. and Mukherjee, J.*) KALOU & SONS v. UFATANNESSY BIBI. 42 W.N. 803.

the pipe line The Court ought rather to give a wider than a narrower interpretation to the expression. The test is really whether when a man meets with an accident arising out of and in the course of his employment, he was in the position in which he was when the accident

water mains fixed to the stand pipe a recording instrument which had to be kept working for 24 consecutive hours Two coolies who were employed in the Water Department of the Municipality were placed on guard to watch the instrument during the night. The instrument was in the road and raised above the level of the road.

WRIT OF PROHIBITION. See PROHIBITION—WRIT OF.

WRONGFUL ATTACHMENT. See TORT.

ZAILDAR—Appointment of—Nin Jamindar appointed by Commissioner after sanctioning candidature—

WORKMEN'S COMP. ACT (1923), S. 3.

Spargo, J.) BOMBAY BURMA TRADING CORPORATION, LTD. v. DAW CHI.

178 I.O. 249—A.I.R. 1938 Rang. 349.

—S. 3 (1)—Liability of employer—Laws—Disobedience of rules—Effect—Difference between English and Indian Law.

Where a workman meddles with machinery, which he is forbidden by specific rules to touch, and attempts to effect repairs which are not part of his work, and sustains injuries during the process, he is not entitled to compensation. The English Law is radically different from the Indian Law in this respect. Under the English Law compensation is disallowed, if the injury sustained is attributable to misconduct of that workman. But force in Burma, the sole question is whether a man wilfully disobeyed a rule devised for securing the safety of workman, and :

such a decision involves a substantial question of law. (*Ismail, J.*) JAGANNATH BRIJ KAJ V. SOEMBAR.

1938 A.W.R. (H O) 684—1938 A.L.J. 1007.

—Ss 8 (4) and 9—Death of an employer—Allotment of compensation to dependant—Subsequent death of dependant—Employer, if entitled to refund of amount paid.

allotted or distributed becomes the property of the dependant and if the dependant dies, the said sum being his property will devolve on his or her heirs. The right of an employer to get a ref. S. 8 can only arise when a workman dependant. S. 9 has no application money has been allotted to dependant employee. (*Venkataramana Rahman, J.*) ABDURAHIMAN v.

I L R 1938 Mad 716—173 I.O. 424—

10 R M 592—1938 M.W.N. 124—47 L W 159—

A.I.R. 1938 Mad 402—(1938) 1 M L J. 571.

—S. 9—Applicability—Allotment made to dependant on death of employee. See WORKMEN'S COMPENSATION ACT, Ss 8 (4) AND 9.

I L R 1938 Mad 716—1938 M.W.N. 124—

47 L W. 159—(1938) 1 M L J. 571.

—S. 10—'Claim'—Meaning of—Demand by workman to foreman of railway for compensation—Sufficient.

A claim within the meaning of S. 10 of the Workmen's Compensation Act is a communication by or on behalf of the workmen from which the employer can see that a demand is being made upon him to pay compensation in respect of an accident. In the case of a very large concern like a railway company, a demand by a workman to a foreman for compensation is not a claim within the meaning of the section. (*Derbyshire, C.J.* and *Mukherjee, J.*) SALAMAT v. THE AGENT, EAST

WORKMEN'S COMP. ACT (1923), S. 23.

INDIA RAILWAY CO. I L R. (1938) 2 Cal. 52—

42 C.W.N. 341—A.I.R. 1938 Cal. 348.

—S. 10—Sufficient cause for not instituting claim within six months—What amounts to.

What amounts to sufficient cause for a workman not instituting a claim within six months of the accident can only be decided in each particular case with reference to the facts and circumstances of that case. Where the workman on returning to work three months after the accident was re-employed by the same employer in the same workshop at the same rate of wages and he continued in that employment at those wages until long

A.I.R. 1938 Cal. 348.

—S. 12 (1)—'Contractor'—Person supplying labour.

A person who does not contract to do the whole or any part of the work but merely supplies labour at so much per head, is not a contractor within the meaning of the Workmen's Compensation Act, and therefore, no right to indemnity. (*Derbyshire, C.J.* and *Mukherjee, J.*) OFATANNESSA BIBI.

42 C.W.N. 803.

—Ss 23 and 32—Examination of witnesses—

evidence on oath and of enforcing the attendance of witnesses and compelling production of documents and material objects O. 26, C. P. Code, which contains rules with reference to commissions to examine witnesses is not mentioned in R. 38 of the rules made under S. 32 of the Act. This omission indicates the want of power of jurisdiction in the Commissioner to issue commissions to examine witnesses. Proviso (b) to R. 38 cannot be read as authorising the Commissioner to adopt a rule of procedure entirely outside and unconnected with the scope of the rules of procedure laid down by the rules. (*Mva Bu and Sharpe, J.J.*) SINGH v. BURMA RAILWAYS. 1938 Rang I R 641.

—S. 23—Order of Commissioner—Revision.

A Commissioner appointed under the Workmen's Compensation Act and adjudicating a claim made under the Act is a "Court subordinate to the High Court" within the meaning of S 115, C. P. Code or S. 44, Punjab Courts Act, and a petition for revision lies against an order passed by him provided all the other necessary conditions are present. (*Tek Chand, J.*)

WORKMEN'S COMP. ACT (1923), S. 31.

G. D. GIANCHAND v. ABDUL HAMID.

A.I.R. 1938 Lah. 855

—S. 30—Appeal—Question of law—When arises
See WORKMEN'S COMPENSATION ACT, SS. 4 AND 30.

1938 A.W.B. (H.C.) 681—1938 A.L.J. 1007

—S. 30—Finding by Commissioner that deceased
was workman—Interference in appeal.

Where there is evidence upon which the Commissioner could come to the conclusion that the deceased was a servant and a workman within the meaning of the Act, it would be wrong for the High Court in appeal to disturb his finding although there is some evidence suggesting that the deceased was an independent contractor (*Derbyshire, C. J. and Costello, J.*) MANAGER, GOURI SANKAR JUTE MILLS v. KHANTAMONI DASI.

42 W.N. 1093

—Sch. II (1) and S. 2 (1)—"Workman"—Conductor of motor omnibus

A conductor of a motor omnibus, though not employed in operating the motor omnibus, and is, the workman within the meaning of the Act (*Costello, A.C. J. and Lethbridge, J.*) NANDA KUMAR SINGH v. PRAMATHA NATH

42 C.W.N. 123

—Sch. II (11)—Construction—"Otherwise adapted for use, transport, or sale, etc."—Meaning of.

The purpose of making, altering, repairing, ornament-

whole clause "denotes work done physically upon the article. A person employed as a labourer in a cotton godown and who helps to unstuck cotton bales or remove them from the godown is a workman falling within Cl. (iii) of Sch. II of the Workmen's Compensation Act, the whole process of taking down the bales from the stack in the godown, its opening and examination in order to enable a purchaser to take a sample, and its closing up and removal con which may be adapting it for transport for sale. (*Beaumont, C. J. and Sen, v. SALUBAI.*)

I.L.R.

174 I.O. 42

40 Bom.L.R. 108—A.I.R.

—Sch. II (iii)—Proof required.

Before a person can claim compensation under S. 2 (1) (n) and Sch. II, Cl. (iii), Workmen's Compensation Act, it is not necessary for him to show that the number of persons employed is fifty or more in the whole business or the factory concerned, what is necessary is that this number should be employed in the "premises" or

Held, that the finding was case within S. 2 (1) (n), Sch question was whether the two the same premises. (*Tik Chand v. ABDUL HAMID.*)

A.I.R. 1938 Lah. 855

—Sch. II (vii)—"Handling"—Carpenter employed to repair boxes containing goods unloaded from ship in port—If workman.

A man employed as a carpenter to mend or repair boxes containing goods which have been unloaded from a ship within the limits of a port is a person employed in the handling of goods within the limits of the port

ZAILDAR.

within the meaning of Sch. II (iii) of the Workmen's Compensation Act, and is therefore a workman. (*Beaumont, C. J. and Sen, J.*) ELLERMAN'S CITY AND HALL LINES v. ASIS THOMAS.

I.L.R. 1938 Bom. 44=173 I.O. 545=10 R.B. 360=39 Bom.L.R. 1230—A.I.R. 1938 Bom. 110.

—Sch. II (viii)—"Building"—Hogla shed.

A Hogla shed is a building within the meaning of Sch. II Cl. (viii) of the Workmen's Compensation Act, although it is erected for a temporary purpose and is some sort of a flimsy pavilion. (*Derbyshire, C. J. and Mukherjee, J.*) KALOO & SONS v. UFATNESSY BBI.

42 W.N. 803.

—Sch. II (x)—Construction—"Working.... pipe line"—Meaning of—Cooly employed to guard at night machinery to test water pressure in water main—If employed in working a pipe line—"Workman."

the pipe line. The Court ought rather to give a wider than a narrower interpretation to the expression. The test is really whether when a man meets with an accident arising out of and in the course of his employment, he was in the position in which he was when the accident occurred because of the work specified in the schedule.

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to make the machine work. A narrower sense is intended in the expression "working a pipe line" in Cl. (x) of Sch. II, the Act intended to give rather more extended protection to persons employed in factories and mines than to persons employed in other capacities. The Bombay Municipality who were the employers in charge of the water supply for Bombay, in order to test the efficiency of the system and to test the pressure in the

widow claimed compensation under the Workmen's Compensation Act.

Held per Beaumont, C. J. and Sen, J.: Norman, J. dis., that the coolies were employed in the working of the pipe line and were workmen as defined by the Act,

I.L.R. 1938 Bom. 164=173 I.O. 673=10 R.B. 367=40 Bom.L.R. 12=A.I.R. 1938 Bom. 155 (B).

WRIT OF PROHIBITION. See PROHIBITION—WRIT OF.

WRONGFUL ATTACHMENT. See TORT.

ZAILDAR—Appointment of—Non landlord appointed by Commissioner after sanctioning candidature—

WORKMEN'S COMP. ACT (1923), S. 3.

Spargo, J.) BOMBAY BURMA TRADING CORPORATION, LTD. v. DAW
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—S. 3 (1)—*Liability of rules—English and Indian Law.*

Where a workman meddles with machinery, which he is forbidden by specific rules to touch, and attempts to effect repairs which are not part of his work, and sustains injuries during the process, he is not entitled to compensation. The English Law is radically different from the Indian Law in this respect. Under the English Law compensation is disallowed, if it is proved that the injury sustained is attributable to the misconduct of that workman. I force in Burma, the sole question man wilfully disobeyed a rule devised for securing the safety of workman, and not whether that disobedience amounted to misconduct, serious or otherwise. (*Baguley and Motely, J.J.*) NAUNG BA TUN v. U OHN KHIN 177 I C. 626—11 B.R. 151—

compensation.

The Workmen be deterred.

Act and cannot be separated from on grounds of sentiment. Where in the case of a loss of the index and middle fingers of a labourer, compensation is awarded as for loss of the arm below the elbow an appeal against such a decision involves a substantial question of law. (*Zemal, J.*) JAGANNATH BRIJ RAJ v. SUENBAR.

1938 A.W.B. (H.C.) 684—1938 A.L.J. 1007.

—Ss 8 (4) and 9—*Death of an employee—Allotment of compensation to dependant—Subsequent death of dependant—Employer, if entitled to refund of amount paid.*

It is clear that once an allotment of compensation to a dependant or a distribution among several dependants is made, the property of the sum allotted or distributed becomes the property of the dependant and if the dependant dies, the said sum being his property will devolve on his or her heirs. The right of an employer to get a refund under Cl. (4) of S. 8 can only arise when a workman dies without any dependant. S. 9 has no application to a case where money has been allotted to dependant on the death of an employee. (*Venkataramana Rao and Abdur Rahman, J.J.*)

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—S. 9—*Applicability—Allotment made to dependant on death of employee. See WORKMEN'S COMPENSATION ACT, Ss 8 (4) AND 9.*

I L B. 1938 Mad. 716—1938 M.W.N. 124—47 L.W. 169—(1938) 1 M.L.J. 571.

—S. 10—*'Claim'—Meaning of—Demand by workman to foreman of railway for compensation—Sufficient.*

A claim within the meaning of S. 10 of the Work-

large concern like a railway company, a demand by a workman to a foreman for compensation is not a claim within the meaning of the section. (*Darbyshire, C. J. and Mukherjee, J.*) SALAMAT v. THE AGENT, EAST

WORKMEN'S COMP. ACT (1923), S. 23.

INDIA RAILWAY CO. I L B. (1938) 1 Cal. 52—

only be decided in each particular case with reference to the facts and circumstances of that case. Where the workman on returning to work three months after the accident was re-employed by the same employer in the same workshop at the same rate of wages and he continued in that employment at those wages until long after the period of six months from the happening of the

AGENT, EAST INDIA RAILWAY CO.

I L B. (1938) 1 Cal. 52—42 C.W.N. 341—A.I.R. 1938 Cal. 348.

other statute imposing a further time limit for bringing his proceedings. (*Darbyshire, C. J. and Mukherjee, J.*) SALAMAT v. THE AGENT, EAST INDIA RAILWAY CO. I L B. (1938) 1 Cal. 52—42 C.W.N. 341—A.I.R. 1938 Cal. 348.

—S. 12 (1)—*'Contractor'—Person supplying labour.*

A person who does not contract to do the whole or any part of the work but merely supplies labour at so much per head, is not a contractor within the meaning of S. 12 (1). (*Mukherjee, J.*) B.I.B.I. 1938 W.N. 803.

—Ss 23 and 32—*Examination of witnesses—Issue of commission—Power of Commissioner.*

There is nothing in the body of the Workmen's Compensation Act which empowers or authorises the Commissioner to have evidence taken on commission. S. 23 invests the Commissioner with powers of the Civil Court only for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling production of documents and orders under O. 26, C. P. Code, which contains rules relating to commissions to examine witnesses in cases not mentioned in R. 38 of the rules made under S. 32 of the Act. This omission indicates the want of power or jurisdiction in the Commissioner to issue commissions to examine witnesses. Proviso (b) to R. 38 cannot be read as authorising the Commissioner to adopt a rule of procedure entirely outside and unconnected with the scope of the rules of procedure laid down by the rules. (*Mva Bu and Sharpe, J.J.*) SINGH v. BURMA RAILWAYS. 1938 Rang. 1 B. 641.

—*Revision.* The Workmen's Compensation Act, a claim made under the High Court within the meaning of S. 115, C. P. Code or S. 44, Punjab Courts Act, and a petition for revision lies against an order passed by him provided all the other necessary conditions are present. (*Tik Chand, J.*)

WORKMEN'S COMP. ACT (1923), S. 31

G. D. GIANCHAND v. ABDUL HAMID.

A.I.R. 1938 Lah. 855

—S. 30—Appeal—Question of
See WORKMEN'S COMPENSATION ACT

1938 A.W.R. (H.O.) 681—

—S. 30—Finding by Commission
that workman—Interference in appeal.

Where there is evidence upon which could come to the conclusion that a servant and a workman within the meaning it would be wrong for the High Court to disturb his finding although there is suggesting that the deceased was an independent contractor (*Derbyshire, C. J. and Costello, J.*) MANA GER, GOURI SANKAR JUTE MILLS v. KHANTANONI DASI 42 O.W.N. 1093

—Sch. II (1) and S. 2(1)—'Workman'—Conductor of motor omnibus

A conductor of a motor omnibus, though not employed in operating is employed "in connection with" the operating of the motor omnibus, and is, therefore, a

The purpose of making, altering, repairing, ornamenting and finishing articles, for use, transport, or sale

whole clause denotes work done physically upon the article. A person employed as a labourer in a cotton godown and who helps to unstack cotton bales or remove them from the godown is a workman falling within Cl. (iii) of Sch. II of the Workmen's Compensation Act, the whole process of taking down the bales from the stack in the godown, its opening and examination in order to enable a purchaser to take a sample, and its closing up and removal constitutes a process which may be adapting it for transport or adapting it for sale (*Braumont, C. J. and Sen, J.*) SAVLARAM v. SALUBAI.

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40 Bom L.R. 106

—Sch. II (iii)—Proofs

Before a person can claim (1) (a) and Sch. II, Cl. (iii), Act, it is not necessary for him to show that the number of persons employed is fifty or more in the whole business or the factory concerned; what is necessary is that this number should be employed in the 'premises' or within the 'precincts'. Where the facts found were that the employer carried on business in two factories, in one of which 40 persons were employed and in the other 11 persons, and that both the factories were really branches of one and the same business.

Held, that the finding in case within S. 2 (1) (a), question was whether the same premises. (*Ter Lund, J.*) G. D. GIANCHAND v. ABDUL HAMID. A.I.R. 1938 Lah. 855

—Sch. II (vii)—'Handling'—Carpenter employed to repair boxes containing goods unloaded from ship in port—If workman.

A man employed as a carpenter to mend or repair boxes containing goods which have been unloaded from a ship within the limits of a port is a person employed in the handling of goods within the limits of the port

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within the meaning of Sch. II (iii) of the Workmen's Compensation Act, and is therefore a workman (*K. J.*)

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42 O.W.N. 1003.

—Sch. II (x)—Construction—"Working... pipe line"—Meaning of—Cooly employed in guard of night machinery to test water pressure in water main—If employed in working a pipe line—"Workman,"

Per Braumont, C. J. and Sen, J.—The expression, "working a pipe line", in Cl. (x) of Sch. II of the Workmen's Compensation Act covers all work necessary in the view of the employers for the purpose of working of

also a wider meaning. The accident occurred because of the work specified in the accident. His particular share in the work whether active or is irrelevant.

In some contexts the word has a more restricted meaning, in connection with the work of the machine.

to make the machine work. A narrower sense is intended in the expression "working a pipe line" in Cl. (x) of Sch. II, the Act intended to give rather more extended protection to persons employed in factories and mines than to persons employed in other capacities. The Bombay Municipality who were the employers in charge of the water supply for Bombay, in order to test the efficiency of the system and in test the pressure in the water mains fixed to the stand pipe a recording instrument which had to be kept working for 24 consecutive hours. Two coolies who were employed in the water

on guard to the instrument of the road and one of the vehicle. The workman

Held (per Braumont, C. J. and Sen, J.) Norman, J. that the coolies were employed in the working of the pipe line and were workmen as defined by the Act, and the widow of the deceased was therefore entitled to compensation.

Norman, J.—The deceased could not be held to be employed in the working of the pipe line when his sole duty was to prevent some external interference with the

knowledge whatever it was and was not a workman. (*Norman, J.*)

I.L.R. 1938 Bom. 164—173 I.C. 673—10 B.B. 397—40 Bom L.R. 12—A.I.R. 1938 Bom. 165 (S.B.)

WRIT OF PROHIBITION. See PROHIBITION—WRIT OF.

WRONGFUL ATTACHMENT. See TONY.

ZAILDAR—Appointment of—Non-lawyer appointed by Commissioner after sanctioning

ZAILDAR.

Non lambardar not an approved candidate before
appointing him is valid, although he was not an approv-
ed candidate before the Collector who made the first
appointment. (Garbett, F.C.) **RUR SINGH v. GUR-**
BAKHSI SINGH. 17 Lah L T. 1.

ZAILDAR.

Appointment of—Non lambardar claimant who
is not an approved candidate—Right to appeal to
Commissioner.

The Commissioner can, in his discretion, entertain
 an appeal of a non lambardar claimant in a *Zaildar*
 or *sufed poshi* case, not approved as a candidate by the
 commissioner. (Dobson, F.C.) **KARTAR SINGH v.**
LACHMAN SINGH. 17 Lah L T. 12.

II—SELECT ENGLISH CASES.

ALIENS ORDER (1920), Art. 18, para. 4 (d)—

Alien—Presentation of an altered passport—Alien sign-

officer, . . . or other person lawfully acting in the execution of the provisions of this order he . . . cl (d) without lawful authority uses

BROKER.

of dividend accruing on the securities so sold, to the death of the tenant for life. *In re STOKES'S WILL TRUSTS* GUNN & RICHARD (1938) 1 Ch. 158=107 L J (Ch.) 122=158 L T. 404.

BILL OF EXCHANGE—Words "not transferable" across bill—Bill made payable only to named payee

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having in knowledge of the fact that it is forged. The words of the article do not put any such burden upon the prosecution and the words of the article negative the view that the prosecution is required to carry such a burden. *CHAJUTIN v. WHITEHEAD*, (1938) 1 K.B. 506=

107 L.J. (K.B.) 270=158 L.T. 277.

APPORTIONMENT—Dividends—Life tenant—Death of—Sale by trustees of securities "cum dividend"—Effect of on dividend accrued during the lifetime of life tenant—If proceeds to go to remainderman or apportionable between life tenant and remainderman.

A testator created certain trusts for two ladies in equal moieties as tenants for life and subject to those life

the amount of the bill and interest.

Held, that the words "not negotiable" coupled with the words "to the order of I.C. Co., Ltd., only" in the bill were sufficient to prohibit the transfer of the bill and that the plaintiff's action was not sustainable. *National Bank v. Silke*, (1891) 1 Q.B. 435, Cons. *HIBERNIAN BANK LTD. v. GYSIN AND HANSON*, (1938) 2 K.B. 384=158 L.T. 525.

BROKER—Stocks and shares—Shares bought for the customer and shares deposited by customer sold out by brokers—Subsequent purchase of the same by brokers at profit—Nature of transactions—Fraud—Nature of the brokers' transactions kept secret from customer—Rights of customer—Conversion—Damages.

O Company carried on business as stock brokers.

purchase price as capital, but ought to apportion it as between, on the one hand, the remainderman, and on the other, the executors of the tenant for life, by paying over to the executors of the tenant for life, out of the purchase price the sum of £1,600, odd representing the

unpaid and subsequently deposited, as was found that O. company was doing this business as a scheme of fraud. The company purporting to buy and in fact making valid contracts of purchase for clients, contemporaneously sold shares of the company and used their clients' shares in

CINEMATOGRAF ACT (1909), S. 9.

sales. When the client closed his account, the brokers O. company went into the market and bought the required shares at the then market price which was very much lower than the rate at the date of the original order by the client.

Held, that the transactions as far as the company were concerned were part of a fraudulent system of business, and were themselves fraudulent in their inception, continuance and completion. A broker is not under an obligation to retain for his client the specific shares which

forfeited the right to an indemnity in respect of transactions which form part of the fraud. The principal on discovering the fraud is entitled to recover back the money paid on the footing of an honest transaction, giving credit for any benefit which he has received. As to the deposited shares, in the circumstances of the case the company never had any right to deal with them. If the transaction had been originally honest, the company would only have had a special property which, on the facts of the case, even had the transaction been honest throughout, would not have given them the right to dispose of the shares, for there never had been default. On the actual facts the disposal amounted to nothing short of on each occasion on which it vested in him a right to damages would be measured by the value of the shares at the date of the conversion. **SOLLOWAY v MC**

1938 A.C. 247=107 L.J.

CINEMATOGRAF ACT (1909), Ss.

County council—Power to issue licences, Delegation of, to justices—Applications to justices for approval of plans for premises—Nature of—Extra-judicial proceedings—Writ of mandamus or certiorari—If can issue.

S. 2 of the Cinematograph Act, 1909, confers on the county council the power to grant licences to such persons as they think fit the licence for the purpose subject to such terms

determine. S. 5 permitted the county council to delegate this power to justices sitting in petty sessions. A county council so delegated its powers to justices. In the statute of 1909

provision erected, premises applicative when the for licence

was taken out for a writ of mandamus

Held, that the justices sitting for purpose of considering plans of, constructed, are not engaged in a such as may be brought to the notice of the Court for the purpose of the prerogative writ of mandamus or certiorari. **THE KING v. BARNSTAPLE JUSTICES: CARDER, Ex parte.** (1938) 1 K.B. 385=107 L.J. (K.B.) 127=158 L.T. 403

COAL MINES ACT (1911), Ss 55 102, sub-S. (8)

Dangerous machinery—Unfenced—Repairs to machinery—Temporarily unfenced to test machine—Unfencing necessary then—Accident at the time—If company exempt under S. 102, sub S. (8).

One morning the respondent, who was employed by the appellant colliery company in one of its collieries sus-

COMPANY.

tained injuries by coming into contract with an exposed and dangerous part of the machinery used in the mine which was not at the time securely fenced. Under S. 55 of the Coal Mines Act, 1911, it is provided that "every flywheel and all exposed and dangerous parts of the machinery used in or about the mine shall be securely fenced," and the company admitted that it fell under this section but relied on S. 102, sub-S. (8) which enacts that "the owner of a mine shall not be liable to an action for damages as for breach of statutory duty in respect of

the machine the day before the accident and made certain adjustments and repairs to the machine. The next morning he had to fix a pulley on to the machine and to enable him to do so he had to stop the machine and remove the guard protecting the chain, etc. Having fixed the pulley he set the machine in motion to test its running and in order to observe its action he did not and could not replace the guard round the machine. Meantime the respondent came on the scene to see what was being done and when getting back to his place he slipped on the pavement and his right hand, which he put out to save himself, was caught in the unprotected

from liability under S. 102, sub S. (8). **COLTNESS IRON COMPANY, LIMITED v SHARP.** (1938) A.C. 90=106 L.J. (P.C.) 142=157 L.T. 394.

COMPANY—Advances to subsidiary companies—

The applicant from time to time made advances by way of loan to two subsidiary companies at the request of the Secretary of the main company. At a subsequent

replay the loan on the theory of ratification because there was no proof that a quorum of directors competent to act had knowledge that the payments were made and that the payer expected to be repaid by the company. **IN re CLEADON TRUST LIMITED.** (1938) 1 Ch. 660=107 L.J. (Ch.) 218.

Borrowing money by—Memorandum and promissory note signed by a director and secretary—Seal of company not affixed—If signed personally by borrower as required by S. 6 of Money-lenders Act (1927)—Note indicating that borrowing was in consolidation of prior loans—Sufficient memorandum.

COMPANY.

A company B. G., Ltd., borrowed money from time to time after 1931 from a money-lending company G. I. F. Ltd., and on 1st December, 1936, entered into a contract with G. I. F. Ltd., under which G. I. F. Ltd. agreed to advance 4,950/- upon the security of a promissory note and B.G. Ltd. agreed to pay interest at 27½ per cent. per annum thereon and pay the amount in certain instalments. This was the sum that was then owing to G. I. F. Ltd., on previous borrowings by B. G., Ltd., as for principal and accrued interest. In default of payment the whole amount became payable. A memorandum of the contract and the promissory note were executed and signed by a director and secretary of the B. G. Ltd., "for and on behalf of B. G. Ltd." But they were not sealed with the company's seal. The B. G. Co. defaulted in payment of the instalments and G. I. F. thereupon applied for the amount due in the liquidation of B. G. Ltd. It was contended by the liquidators that the contract was unenforceable as (r) the memorandum was not signed by the company personally and was not sealed, and (rs) that the memorandum was bad as it did not specify full particulars.

Held, that the contract was duly executed in accordance with S. 29 of the Companies Act 1929 and was therefore signed 'personally by the borrower' within the requirement of Montylen.
It is not necessary that it should be random was sufficiently full in that it was in consolidation of

BRITISH GAMES, LIMITED (1938) 1 Ch 240 =
107 L.J. (Ch) 81 = 158 L.T. 239.

reorganization of its capital in which a reduction of its capital from 95,000,000/ to 89,565,859/, was an inte

COMPANY.

meeting of the holders of the deferred shares then took place. The holders of shares of other classes than deferred shares were in the hall during this meeting, but did not take part in it. The substantial opposition to the scheme came from deferred shareholders although the ordinary shareholders were not unanimous in its favour. The proceedings were conducted in such a manner as to satisfy those present and no objection was taken by any of the shareholders present at either of the class meetings to the physical presence in the hall during the conduct of such meeting of holders of shares of a class other than that affected. A poll was demanded. The Chairman then announced the result of the polling and declared that the resolutions laid before the extraordinary general meeting had been duly carried as special resolution and that those before the respective class meetings of the holders of ordinary and deferred shares had been duly carried as extraordinary resolutions with the requisite majority. The company presented a petition to the High Court of Justice praying for confirmation of the capital reduction involved in the resolutions passed. The reduction of the company's capital was confirmed successively by Eve, J. and the Court of Appeal. A single deferred shareholder appealed to the House of Lords.

	"	action of
"	"	scheme
"	"	deferred

Per Lord Blanesburgh.—That the fairness or other
 wise of the proportion in which the ordinary and the
 exchange
 100—was a
 classes to
 from the defer
 reduction being
 notwithstanding that

such incidence was not otherwise authorized by the Articles was either asked for or given. So the reduction cannot be recorded as having been authorized by the

tely for approval by extraordinary resolution; and the third, a corresponding meeting of deferred shareholders only, similarly convened to approve of the scheme as specially affecting their class interests. At the extraordinary general meeting, about 1,600 shareholders of all classes were present. They were invited to remain seated as they were until the business of the last of the three meetings had concluded. The class meetings of the holders of ordinary shares followed. The class

to the meeting being so conducted and the resolution was accordingly a valid extraordinary resolution passed at a meeting of the deferred shareholders.

Per Lord Blanesburgh and Lord Maugham—Art. 44 provided that the company may by special resolution reduce its capital by paying off capital, cancelling capital which has been lost or is unrepresented by assets, reducing the liability on the shares, or on as may seem expedient.....Hence by this A

COMPANY.

company had power to reduce its capital in any way authorized by the Companies Act, 1929.

Per Lord Russell of Killowen.—In view of the large number of votes in favour of the scheme given, at the

purporting to modify the rights of the holders of the ordinary and deferred shares respectively, based as they

On the application under S. 55 of the Act to confirm the reduction, the Court, whether or not petition is opposed, has a duty to consider whether the proposed reduction is a fair or an unfair one. The holders of

of the directors and experts. The question is to be decided with a view to the future success of the company. The shareholders acting honestly are usually much better Judges of what is to their commercial advantage than the Court can be. But this proposition may not be of much value as a guide, when it is proved that the majority of the class have voted or may have voted in

by way of fraudulent preference—Payments by customer to company during the period—If can be set off.

A company *F* carrying on business as contractors for tar-paving and similar work was for a long time a customer of the respondent companies (*W* and *J*) and had considerable dealings with them. The respondent companies supplied goods to the *F* Company loans to it and in that way the *F* Company debted to them and the *W* Company to the *F* Company for work done by it. The *F* Company was wound up. 3 months prior to the commencement of

could not be allowed. *In re B. B. FOWLER LIMITED* (1938) 1 Ch. 113=107 L.J. (Ch) 97=158 L.T. 369.

CONTRACT—Agreement by a married woman with a

CONTRACT.

by in consideration of the plaintiff persuading her husband to go to New Zealand and for consenting to forego the consortium of her said husband, the defendant promised to pay to the plaintiff an allowance at the rate of

upon an illegal consideration and opposed to public policy.

is enforceable which is inconsistent with maintenance of the marriage tie, in the absence of any immorality or illegality, in the contract.

Held by the Court of Appeal, that the consideration was not the consent of the plaintiff or of her husband. The agreement of separation, for a period and all remain as husband and wife, or the financial means living together. The plaintiff's persuasion by the wife to pay the plaintiff a

weekly allowance. *DAVIES v. ELMSLIE* (1938) 1 K.B. 337=107 L.J. (K.B.) 113=158 L.T. 362.

—Breach of—Damages—Agreement not to disclose statement by party confessing offences committed by him and others—If valid—Public policy—Disclosure of—Expulsion of party making statement—Damages if to be nominal

workman in the printing trade National Union of Printers, workers, a trade union of his trade. It comprises in its membership all workers engaged in those works. The defendants are the printers of two papers. They had for several years organised cross word puzzle competitions. Up to some date in 1932 they had employed the plaintiff *H* as a sorter in their competition department. The post of sorter gave an

and lost several benefits thereby, for example, unemployment benefit, etc. Thereupon the plaintiff brought this suit for damages for breach of contract of secrecy which

revealed a crime and any agreement from the ordinary

CONTRACT.

was a valid agreement, and the defendants disclosed the confession in breach of the agreement, yet the damages were due to the plaintiff's own wrongful act, namely, having knowingly acted to the detriment of the trade union. That act was the *causa causans* of the damage suffered by him by losing the membership and the wrongful disclosure was only the *causa sine qua non*. He will therefore be entitled only to nominal damages. *Weld-Blundell v. Stephens*, (1919) 1 H. R. 520. (1920) A. C. 956. Appl. HOWARD v. ODHAMS PRESS, LIMITED. (1938) 1 K. B. 1=

106 L.J. (K.B.) 675 = 157 L.T. 191.

CONTRACT.

depreciation money and arrears of instalments due, the defendant pleaded that it was an implied condition of the agreement that the plaintiff owned the lorry on the date of the agreement that as the plaintiffs admittedly did not own it on that date but only some days later, they had no title to hire and the contract was bad.

Held, that the material time when the implied condition as to warranty of title arises is the date when the bailment or delivery takes place and not the actual moment of signing of the agreement. On the date of delivery the plaintiffs were the owners and therefore the agreement was satisfied. *Karfax, Ltd. v. Poole*, (1933) 1 MERCANTILE UNION GUANO LIMITED v. WHFAILEY.

490 = 107 L.J. (K.B.) 158 = 158 L.T. 414.

on the ground of his adultery with the plaintiff. After the date of the decree *nisi*, the defendant promised to marry the plaintiff after the decree *nisi* against him was made absolute. Sometime after the promise, in due course the decree *nisi* was made absolute in July but the defendant refused to marry the plaintiff and in 1934 married another lady. The plaintiff thereupon brought the action for damages for breach of promise to marry her. The Court of Appeal held in (1936) 1 K. B. 111 that the promise was unenforceable as against public policy because it was entered into at a time when the marital obligation of the defendant with his wife had not been fully severed.

—Involuntary—Nullity of marriage—Marriage

law to say that in through fear, the person of ordinary courage and resolution to yield to it. Whenever from national weakness of intellect or from fear—whether reasonably entertained or not—either party is actually in a state of mental incompetence to resist pressure improperly brought to bear, there is no consent. Observations of Brett J. in *Scott v. Sebright*, (1888) 12 P.D. 21 Foll. HUSSEIN OTHERWISE BLITZ v. HUSSEIN. (1938) F. 159.

—Mistake—Payments under mistake—Mistake of fact, what is—Knowledge of an agent of company of the correct amount payable—Agent not aware that another agent was overpaying by mistake—If company can

any with its at A and a factory the They there- with the local at a mini- mum rate of 375s. per quarter. By a supplemental contract of 1927 the payment was reduced to 100s. a quarter. This was arranged by the plaintiff's managing agent at Glasgow but by an oversight he did not communicate the fact of reduction to the branches at A and S. The Council at S also by mistake was sending the

They owe no duties each to the other to perform any kind of matrimonial obligation. The custody of the children and the maintenance of the wife, if petitioner, is provided for by the Court. In those circumstances there is no interference with matrimonial obligations by a promise made to marry a third person. There is

(1938) A. C. 1 = 108 L.J. (K.B.) 641 = 157 L.T. 340.

—Hire purchase—Vendor not owning the article on date of agreement—Purchase by vendor later—Delivery of same to hirer—Hirer accepting it—Hirer in arrears—Vendor taking possession terminating the

should no

Into nego- purchase of a

Held, that the mistake was a mistake of fact and not a mistake of law. The fact that the managing director of the company knew of the agreement of 1927 was immaterial inasmuch as he had no authority to be acting upon. The cause of action arises for purposes of limitation from the date of payment and demand is not necessary as a condition of the completion of the cause of action. *BEST SUGAR CORPORATION, LIMITED* =

CONTRACT.

URBAN DISTRICT COUNCIL. (1937) 2 K.B. 607 = 106 L.J. (K.B.) 885 = 157 L.T. 450.

—Vendor and purchaser. Contract to sell land—Payment to be by instalments—Failure in payment of certain instalments—Clause providing for forfeiture of instalments paid if default in payment of further instalments—If in the nature of a penalty—Court, if can relieve, against it and direct return of instalments

etc., belonging to the defendant company in Tasmania Of this 4,000l. was paid by the date of the agreement and the balance was made payable in certain instalments on the dates specified in the agreement. Cl. (12) of the agreement provided that "if the purchaser shall make default in the payment of any of the other instalments mentioned in cl. (2) hereof or any part thereof on the due dates as provided in the said clause the land company may

feited to the Land company and this contract shall subject as aforesaid thereupon become absolutely null and void. Certain sums were paid by the plaintiff in instalments as provided in the agreement but subsequently he failed to pay an instalment that fell due in May, 1931. Thereupon the defendant notice that they rescinded the contract under the agreement and forfeited the amounts In an action to recover the instalments alre.

Held, that though cl. (12) provided that on rescission the contract became null and void, it did not mean that the contract became void *ab initio* in the sense of treating the contract as though it had never existed at all. The claim to refund could not be as for recovery of money had and received because the money was rightly paid under the contract and thereon it became the money of the defendants. The provision in the contract that if the plaintiff should fail to pay any of the instalments the defendant should be entitled to retain the money paid is not in the nature of a penalty as there is nothing unconscionable in the stipul nothing unconscionable on the part of t has contracted to part with his land on enforce the contract if he so desire. case where the plaintiff says that he is now willing to carry out the contract and wants relief on that basis. *Steadman v. Drinkell*. (1916) 1 A.C. 275, Dist. MUSSEIN v. VAN DIEMEN'S LAND COMPANY.

(1938) 1 Ch 253 = 107 L.J. (Ch.) 136 = 158 L.T. 40.

COPYRIGHT—Copyright Act (1911), S. 6—Copyright in idea.

"A person may have a brilliant idea for a picture, or for a play, and one which him to be original, but if he communicates as an author or an artist or a play which is the result of the commur the author or the artist or the right of the person who has cloth whether by means of a picture, pl., owner of the idea has no rights in that product. On the other hand, if an author employs a shorthand writer to take down a story which the author is composing, word for word in shorthand, and the shorthand writer then transcribes it, and the author has it published, the author is the owner of the copyright and not the short-

COPYRIGHT.

hand writer. A mere amanuensis does not, by taking down word for word the language of the author, become in any sense the owner of the copyright." *DONGHUE v. ALLIED NEWSPAPERS, LIMITED*.

(1938) 1 Ch. 106 = 157 L.T. 186 = 107 L.J. (Ch.) 13.

—Infringement—Conversion—If cumulative or alternative damages—Limitation of time for action—Limitation of time for conversion—Act of conver-

sued the defendants for damages for infringement of copyright and for conversion, in that the defendants incorporated into his book part of the plaintiffs' book. The question arose as to the period of limitation nature of the damages, etc. It was held that the damages were cumulative and not alternative. On the question of limitation,

Held, by the Court of Appeal (MacKinnon, J., dissenting) that in respect of the claim in conversion the period is six years running from the date of conversion three years 115 is not a 7 based on

Held, by the Court of Appeal that the act of conversion as at the date of which the value of infringing copies ought to be ascertained is not the order to the binders to bind the sheets which contained the infringing matter but the delivery by the defendant of the

PANY, LIMITED v. CAXTON PUBLISHING COMPANY, LIMITED.

(1938) 1 Ch 174 = 107 L.J. (Ch.) 99 = 158 L.T. 17.

—Publisher of pictures—Publication of pictures outside Canada prior to 1924—Right to copyright in Canada—Canadian Copyright Act of 1924—Non-compliance with—Imperial Copyright Act of 1914, S. 25—Certificate of Secretary of State—Effect of.

The appellant, a publisher of fine art colour prints, residing in England, brought an action against the respondents for publishing, in Toronto, a number of

1. The appellant copyright in these prints, or (2) the pictures in question

were made before 1924 outside Canada. Held, (1) that S. 42 of the Canadian Copyright Act of 1921 is only a transitional enactment designed to prevent the loss of rights existing before 1st January, 1924, and the pre-existing copyright must have been copyright in Canada. As the appellant never acquired copyright in Canada under the prior Act of 1906 and

n Canada before 1st the copyright thereof protect his rights, his (2) The certificate of under S. 25 of the 1923, did not and Act to Canada. His bringing into operation would for the purposes

of the rights conferred by the Imperial Act (but for those purposes only) be treated as if it were a Dominion to which the Act extended. The Imperial Act conferred no right in Canada and it was only in respect of the rights conferred by it that Canada was to be treated as if the Act extended to it. The effect of the certificate

COSTS.

would be that a Canadian author writing in Canada would become a person entitled to 'the rights conferred' by the Imperial Act. So the Imperial Act conferred no rights in Canada to the appellant. *MANSELL v. STAR PRINTING AND PUBLISHING COMPANY OF TORONTO* (1937) A.C. 872—106 L.J. (P.C.) 147—157 L.T. 445.

COSTS—County Court Rules, 1936—Scale of costs—Jurisdiction of Judge to increase the scale of costs—O. XLVII of the County Court Rules.

O. XLVII of the County Court Rules, 1936, provides as follows:—K. 1. "Subject to the provisions of any Act or Rule, the costs of proceedings in a County Court shall be in the discretion of the Court". K. 2. "The Scales of Costs in Appendix B shall have effect for the purpose of regulating the costs of proceedings in a County Court subject to and in accordance with the Rules of this Order and the directions contained in the Scales of Costs". Rule 3 provides for certain scales. R. 13 provides for power in the Judge to award costs on such scale as he thinks fit where he certifies that the question in dispute was of importance to a class or body of persons or involved a difficult question of law or that the decision of the Court affects issues between the parties beyond those directly in the proceedings. There were certain other rules providing for fees beyond the maximum prescribed

higher costs as under K. 13. *MURRAY v. REDPATH, BROWN AND COMPANY* (1938) 1 K.B. 419—107 L.J. (K.B.) 168—158 L.T. 64.

CUSTOMS AND INLAND REVENUE ACT 1889—Fictitious duty—Life assurance policy—Assignment of

assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit".

Held, the meaning of the sub-section is that "where the policy is partially kept up by such person for the benefit of a donee whether nominee or assignee, the charge shall extend to a part of the policy moneys in

proportion is to be determined by events which take place after the donation. *THE LORD ADVOCATE v. INZIEVAR ESTATE* (1938) A.C. 402—107 L.J. (P.C.) 65—159 L.T. 97.

DEBT.

DEBT—Accord and satisfaction—Discharge of one of joint debtors by operation of law—Other joint debtor if released—Sanction of a scheme of arrangement under S. 153 of the Companies Act, 1929—Effect.

Two companies, S and G, became jointly or jointly and severally liable to pay, to a third company T a sum of money. A scheme of arrangement between one of the companies S and its creditors was sanctioned by the Court under S. 153 of the Companies Act, 1929. The creditors of the S company accepted the scheme in full satisfaction and discharge of all their claims against the company. The T company also accepted the scheme as a discharge of all liability to them of the S company but did not intend thereby to give up their claims against the G company. The question arose if the G company was also released.

Held that the scheme did not release the G company from its liability in respect of the debt to T company. The effect of S. 153 of the Companies Act is to give to a scheme when sanctioned by the Court under this section a statutory operation. The scheme when sanctioned by the Court becomes something quite different from a mere agreement signed by the parties. Accord and satisfaction between a creditor and one of several debtors, discharges the other debtors unless it appears from the terms of the agreement or the surrounding circumstances that the creditor intended to reserve his rights against them. A discharge of one of several

not release
S. LIMITED,
(Ch.) 385—
57 L.T. 258.

Limitation—Arrangement between creditor and debtors—Creditor proceeded with farm produced and house—Continuous acknowledgment of debt—Statute bar—Limitation Act, 1623.

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entitled as a creditor under the deed to the sum advanced by him by way of loan. The claim was rejected by the trustee of the deed.

Held, that the arrangement made in 1927 clearly acknowledged the existence of the debt for it provided for the future discharge of interest in respect of it. The services rendered to the claimant in pursuance of the

constituted a valid enforceable claim against the debtors and the trustee appointed under the deed of arrangement should admit the same to proof as the carrying out of the arrangement of 1927 takes the case out of the Limitation Act, 1623. *In re WILSON; Ex parte WILSON*

INCOME-TAX.

—Profits or gains of business—Subsidiary companies—Payment of share of profits in lieu of services rendered—Restriction for income-tax purposes—Income-tax Act, 1918, Sec. D, R. 3 (a).

A company which was carrying on business as manu-

technical and financial knowledge and experience and giving to the company and its directors advice to the best of their ability respectively to manufacture and finance a company's products."

Held, that the sums paid to the company in respect of the 20 per cent of the profits payable to the company as a reimbursement or expense wholly and exclu-

it should be deducted from arriving at the profits gains of the company for income tax purposes. **BRITIS SUGAR MANUFACTURERS LTD. v. HARRIS.**

(1938) 2 K.B. 220 (C.A.)—107 L.J. (K.B.) 47—

INSURANCE—Life Insurance—Husband taking policy for benefit of his wife—Death of wife—Husband continuing to pay premiums till male Administrator of the wife's estate—Lien on the policy n premiums paid.

A husband took out a policy of insurance for life for the benefit of his first wife. At death the policy had no surrender value. At death, he continued to pay the annual premium when the policy moneys were paid to the Administrator of the wife's estate and were placed on deposit in a bank. The husband in the interim appointed his second wife executrix.

Held that the husband was a

INSURANCE.

without a license and for driving a motor-cycle in a dangerous manner. The defence was that it was not a material fact because the company had accepted policies in certain other cases with knowledge of such convictions there.

The allegations regarding this defence should the allegations amounted to no more evidence of want of materiality. The discovery by the plaintiffs of all documents in their possession relating to policies which have been granted or refused by the plaintiffs, where disclosure had been made of similar convictions.

tion had been disclosed to them by the applicants, and not decline the risk or raise the premium, is not relevant.

If discovery had been asked for, or could asked, of documents relating to cases where after discovering the existence of similar

v. DAVIES:

(1938) 1 K.B. 196—156 L.T. 524—106 L.J. (K.B.) 433

The respondent company issued a commercial Motor policy including a widow's interest in the ground rent of a property. The deceased was employed by J.B. who had entered into a

with a certain motor cycle. In July, 1937, the currency of the policy the defendant while motor-cycle was involved in an accident where

INSURANCE (NATIONAL HEALTH)

covered—namely, that described in the words in brackets in (c) which is in the form of an exception to an exception and thus constitutes a "contract of employment" shot in the implied limitation "policy". It includes a contract in which the deceased was being engaged and as an incident of the haulage so far as D was concerned. So the liability

Insurance (National Health) Act, 1936, s. 1(1)(c)—*Claim from patient's society approved*

and under the law now in England only is entitled to practice dentistry though he is not a dentist registered

tered through approved societies and a medical man who treats a patient who is a member of those approved societies is entitled to obtain his remuneration not from the patient but from the society to which he belongs. Dr B supplied dental treatment to the defendant society of

and to practise dentistry to claim the charges from the society and not from the patient treated, the dentist must be such a dentist under the Dentists' Acts and the plaintiff Dr B not being one registered under those Acts would be entitled to recover from the patient but not from the society. *BYNOE v GENERAL FEDERATION OF TRADE UNIONS APPROVED SOCIETY*

(1938) 1 Ch 164 = 107 L.J. (Ch) 26 = 157 L.T. 508.

INTERNATIONAL LAW—*De facto Government*—

De jure monarch's rights—Whether to be recognised by courts

A company the Bank of Ethiopia, was formed under

tive of the Italian Government authorities. On 9th

INTERNATIONAL LAW.

since then under Italian control. In 20th June, a Government decree, valid according to the law as recog-

directors before June, and who were not, at the date of the action, acting under the direction or with the

convened.

Italian Government cannot be impugned on the ground that it was not the rightful but a usurping government

acts of that government done at any time which they were in fact the government, though not yet recognised as such by His Majesty; (4) as the former government has departed and there is no governmental authority

—Ex Emperor of Abyssinia—Suit for recovery of amounts due under contract—Rival claim by Italy—Jurisdiction of British Court.

The plaintiff, the ex emperor of Abyssinia instituted an action for an account of what was due under a contract made between the Director-General of Ports, etc., of Ethiopia and the defendant company which was in Great Britain. It was ascertained from the Foreign Office that His Majesty's Government still recognised Ethiopia and that the Italian Government of virtually the proved that a claim contract had been

made by the Italian Government.

Held, that the Court had no jurisdiction to decide on the plaintiff's claim as there was a rival claim by

Observations of
hed on. HAILE
TD.

L.J. (Ch.) 201.

th Port—*Posterior*
nom of ship taken by Spanish Government—*Claim by the*
rality of ownership

be business of ship
an action for a writ
S. S. "Cristina" for

JUSTICE.

a declaration of ownership and for possession.

The "Cristina" is a Spanish ship and was
and
upon
the
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master appointed in the name of the Government the new captain took charge the ship's expenses been disbursed by the Spanish Government. The shipowner (company) then issued this writ in rem claiming as owners. The respondent (Spanish Government) entered a conditional appearance and stated that they were the owners or parties interested and also moved for the writ and all subsequent proceedings thereon being set aside inasmuch as it impleads a foreign sovereign state, namely, the Government of Spain.

Held, that the Spanish Government was in fact pleaded and they were intended to be so impleaded. The order sought in the present case would necessarily displace the *de facto* possession of the Spanish Government. No such writ can be upheld against the foreign sovereign state unless it consents, because a sovereign state cannot, directly or indirectly be impleaded. *COMPANIA NAVIERA "STEAMSHIP" "CRISTINA"*.

JUSTICES—Summary jurisdiction
ing that they had no jurisdiction—*1*
state a case.

LANDLO

produce in
the whole of
of part of
to the second warehouse.

The plaintiffs, as lessors, granted a lease to the defendants for a term, of property R. The lease contained a covenant that the lessees will within two calendar months next after the execution of every assignment or under-lease of the demised premises or any part thereof produce or cause to be produced such assignment or under-lease or the counter-part thereof to the lessors or their agents or solicitor for registration. The defendants demised the same premises to the M Bank and, the same day the M Bank under let part of the demised premises to the defendants. The question

lease within the meaning of that covenant **PORTMAN v. J. LYONS & CO** (1937) 1 Ch 584—
106 L.J. (Ch) 277=156 L.T. 141.

Until her death in 1931, one Mrs. F was the tenant of a house and had sublet three rooms therein to the defen-

LEGISLATION.

was accepted by the defendant, who paid rent on that basis for some years also. In 1936 he stopped payment on the ground that all the five rooms were controlled premises under the Rent Restriction Acts and only proper rent can be claimed. It was found that the three rooms occupied by him were controlled rooms but

mit Judge
became de
Mortgage
Interest Restrictions Act, 1923, as on the death of Mrs. F, the landlord must be deemed to have come into possession inasmuch as the defendants' possession was only as trespasser. Sub S. (1) of S. 2 of the Rent and Mortgage Interest Restrictions Act of 1923 provides that

need against him the agreement of of landlord and after Mrs. F's possession and the controlled. Observations of Scrutton, L.J., in *Goudge v. Broughton*, (1929) 1 K.B. 103, discussed and distinguished. **HOLDEN v. HOWARD**, (1938) 1 K.B. 442=107 L.J. (K.B.) 163=168 L.T. 68.

LEGISLATION—Statute within the express powers of the legislature—Other matters incidentally affected—Effect—True test of valid legislation—Milk and Milk Products Act of Northern Ireland, 1934—Construction and validity of—Act regulating supply of milk—Farmers outside Northern Ireland adversely affected—If entitled to remedy—S. 4 (7) of the Government of

accordance with the Act and a person shall not sell milk unless he holds a licence. The appellant is one of the farmers whose farms are situated in the county of D within a he habit Act and

only in the Ireland territory and such persons are not entitled to a producer's licence under the Act, to sell milk in that

MALICIOUS PROSECUTION.

territory, (2) that the Act must be construed as imposing control over every person who within Northern Ireland sells or exposes for sale milk, whether the milk is produced within or without Northern Ireland, (3) that the true nature and character of the Act its pith and substance, is that it is an Act for the peace, order and good government of Northern Ireland 'in respect of' precautions taken to secure the health of the inhabitants of Northern Ireland by protecting them from the dangers of an unregulated supply of milk. Though it may incidentally affect trade with D it is not passed in respect of trade and cannot be attacked on that ground. So it does not offend the express limitations of s. 4 (7) of the Government of Ireland Act, 1920.

Per Lord Atkin—It, on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorized field. The legislation must not, under the guise of dealing with one matter, in fact encroach on the forbidden field. Even a law, if it is achieved by invalid methods. (S. 4 (7) of the Government of Ireland Act, 1920, provides that provisions of this Act . . . the Parliament of Northern

tion....") **GALLAGHER v LYNN** (1937) A.C. 863—106 L.J. (P.C.) 161—157 L.T. 374.

MALICIOUS

*probable cause—Is
How far correct—*

H (plaintiff) in conspiracy to defraud, obtaining money from him by false pretences. On the information of *S* they were charged before the justices at *E*, committed for trial to the Central Criminal Court, tried there by the recorder and convicted. On appeal, the Court set aside the conviction, being of opinion in the case of *H* that there was not a sufficient case to go to a jury. Plaintiff *H* was found to be innocent but the question was as to the effect on *S*'s mind.

Held, that reasonable and probable cause is as defined by Hawkins, D. 167 at 171, based upon a

is for the Judge. To ask the general question whether the defendant took reasonable care to inform himself of

MINOR.

MAN v. SMITH.

(1938) A.C. 305—
107 L.J. (K.B.) 225.

MASTER AND SERVANT—*Accident to an employee in a mine—Duty of owner to provide a safe system of working in mine—Delegation of the duty to an agent—If master liable for accident caused thereafter*

The appellants owned a number of collieries. The respondent was an uncost worker at one of his collieries and while so employed met with an accident and sustained injuries in respect of which he claimed damages. On the date of the accident, he was employed underground on the work of repairing an airway leading off the Mine Jigger Brae, one of the main haulage roads. When he was proceeding, at the end of the day shift, between 1.30 and 2 P.M. to the pit bottom by way of the Mine Jigger Brae the haulage plant was put in motion and before he could reach one of the manholes provided, he was caught by a rake of hutches and crushed between it and the side of the road. The Board of Directors appointed the agent in turn, by the appointment of the Board of Directors. All the subordinate officials were selected and appointed by managers out the Regulation of that the

known to the agent. S. 2, sub S. 4 of Coal Mines Act, 1911, provides that "the owner or agent of a mine

whom they are excluded by statute, when they had delegated the duty to take care of the servants to competent subordinates and (2) that under the doctrine of common employment, company is not liable for the negligence of the agent who was a fellow employee.

Held, that the master, being primarily under a duty to take due care in the provision of a reasonably safe system of working, is not absolved from that duty by the appointment of a competent person to perform the duty. As for the second ground, the agent engaged in a safe system a common em- the mine He

He is performing the
y of an employee. **WIL-
COMPANY LIMITED v.
(1938) A.C. 57—
P.C.) 117—157 L.T. 406.**

MINOR—*Hire purchase agreement of a motor lorry—Minor carrying on business as haulage contractor—*

That question together with the question whether the facts so believed amount to reasonable cause for believing the accused to be guilty, are for the Judge. **HERM-**

hire-purchase, it was found by the County Court that the contract was not for the benefit of the minor and that therefore the contract was void.

MORTGAGE.

beneficial to the in contract for the la- hire-purchase terms was not a contract for the benefit of the minor, it was not binding on him. **MERCANTILE UNION GUARANTEE CORPORATION, LIMITED v. BALL.** (1937) 2 K.B. 498 =

106 L.J. (K.B.) 621-157 L.T. 162.

MORTGAGE—Law of Property Act, 1925—Mortgagee entering into possession—If can appoint a receiver to take possession.

It is open to a mortgagee to exercise the power given to him under S. 101, Sub-s. 1 (3) of the Law of Property Act, 1925 to appoint a receiver of the income of the mortgaged property or any part thereof, even after he has gone into possession of the properties. The words in which the power to appoint a receiver is expressed are

PANV, LIMITED v. PEARLBERG. (1938) 1 Ch. 687.

Hammers, etc.—If it of neighbour's comfort on complaint m.
The defendant co site land and build:

OPEN SPACES ACT (1906), S. 10.

described as the usual and normal use of land by

note of and the plaintiff has no cause of action by the fact of the new machinery used; and if customers to the hotel should have stopped custom by this noise it is a necessary misfortune for which she can have no cause of action unless if the defendant has exceeded his limits but that in working the operations the defendants had exceeded their limits as in the matter of throwing dust, etc., they showed a reprehensible lack of regard for the duty which they owed to their neighbours. **ANDREAE v. SELFIDGE AND COMPANY, LIMITED.** (1938) 1 Ch. 1-107 L.J. (Ch.) 126-157 L.T. 317

OFFICIAL SECRETS ACT (1911) S. 2, sub S. (1) —Police Officer—If a "person who holds office under His Majesty".

The Official Secrets Act, 1911, S. 2, sub-S. (1) pro-

"If any person having in his possession or . . . information . . . which has been

confidence to him by any person holding His Majesty, . . . (a) communicates the . . . in-

o any person, other than a person to whom

ne is authorised to communicate it, . . . that person shall be guilty of a misdemeanour", and Official Secrets Act,

"aph almost identical with the police circular in the D.D. newspaper written by the appellate circular was only for police use and confidential respondent (superintendent of S police) the appellant and asked him to disclose the his informant under S. 6 of the Official Secrets

police was

sales, police, city, within, contract, that, d his, it is, esty"

within the meaning of the Official Secrets Act, 1911, S. 2, sub-S. (1) pro-

(1938) 1 K.B. 454 =

107 L.J. (K.B.) 429-159 L.T. 166.

OPEN SPACES ACT (1906), S. 10—Compliance of land to Local Authority to be preserved as an open space—Laying out the land as sports ground—Erection of residence for caretaker—Action by Attorney General for an injunction restraining such erection—If maintainable.

Relevant portion of S. 10 of the Open Spaces Act 1906, provides as follows:—"A local authority who have acquired any estate or interest in or control over any open space . . . under this Act shall, subject to any

interfere with her reasonable and comfortable enjoyment of her premises. Bennet, J., held, that by reason of these operations there was a substantial interference with plaintiff's reasonable enjoyment of her buildings and that it constituted an actionable nuisance, that the qualification with regard to the rule in regard to interference that in respect of operations of this character such as demolition and building, if they are reasonably carried on and all proper and reasonable steps are taken to ensure that no undue inconvenience caused to neighbours, whether from noise, dust or other reasons the neighbours must put up with it, applies only where the operations are operations that may be

PERPETUITY.

conditions under which the estate, interest or control was so acquired—(a) hold and administer the open space . . . in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and regulation and for no other purpose . . . and keep the open space . . . and may inclose it or keep it . . . and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such other works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them". In 1905, the Commissioners of Poole Harbour conveyed to the corporation of Poole a part of Sandbanks containing about 12 acres. The conveyance was expressed to be made in consideration of certain covenants on the part of the corporation. The land was expressed to be conveyed to the council to hold . . . that the same may for ever be used as an open space or as ground for the public use . . . and that the corporation "as subject as aforesaid preserve it as an open space or as a pleasure ground for the use of the public and . . . take such steps to maintain the land as such". The corporation afterwards erected a residence for a permanent caretaker of the land. . . .

PRINCIPAL AND AGENT.

Held, the gift of the whole income to the survivor of them is void for perpetuity. The interest is contingent and not vested. The original interest given to the two grandchildren is an interest to them as tenants in common. Upon the death of the first a new interest is

a contingent
reversionary
interest vesting with
the survivor.

Von Lucdeke, (1906) 1 Ch. 783, followed. *In re Leigh's Settlement Trusts, Public Trustee v. Leigh*, (1938) 1 Ch. 39=137 L.J. (Ch.) 6.

POWER OF APPOINTMENT—*Settlement—Power to appoint in favour of one—Prior attempt with trustees of settlement to secure a benefit for appointor—Failure of—Later exercise of power in favour of the object of the power—Motive to defeat the trustees—If exercise of power fraud on the power.*

her
she
N.
Taka

Held

In respect of which the covenantees would be the proper persons to sue. The corporation of Poole, when they accepted the conveyance, became subject to the covenants

et al., the question of a fraud on a power of appointment where there is one object and one object only of the power, differs widely from the question of a fraud on

ATTORNEY-GENERAL v. POOLE CORPORATION
(1938) 1 Ch. 23=106 L.J. (Ch.) 319=167 L.T. 209

PERPETUITY—*Special power of appointment*—

ed to deliver particulars stating which of the statements in the words complained of the defendant relies on as statements of fact and which as expressions of opinion,

common and after the death of either of them to pay the whole of the income thereof to the survivor of them during the residue of his or her life but so that my said grand-daughter shall not during 21 years from my death have power to anticipate the half or the whole (as the case may be) of the income payable to her under this present trust". Neither of the two grandchildren was alive at the date of the deed of 1891 which conferred the power

Owner, meaning of—Mercantile, agent—Pledge of documents by agent to Bank—Bank surrendering the same to pledgor as trustees for sale—Pledgor fraudulently pledging elsewhere—If Bank entitled to recover the documents.

The Lloyds Bank advanced money to S. & Co., Ltd., which carried on business in Bombay and London and received by way of security for such advances Bills of lading and invoices in respect of certain merchant

PRINCIPAL AND SURETY.

The Bank handed to S. & Co. in London lading and invoices to enable S. & Co. to chandise as trustees for the plaintiffs on the letters executed by S. & Co. to the Bank of the Bank surrendering documents like in existence for over 6 years. But S. & Co. financial difficulties and unknown to the Bank pledged with the defendant Association those documents taken from the Lloyds Bank. The defendant neither knew nor had any reason to suspect S. & Co. in this matter. The Bank claimed the return of the documents and damages from the defendant.

Held, that S. & Co. were mere mercantile agents

in the mercantile agents employed to sell the documents were not handed back to S. Co. as owners

signed by both—Principal paying one instalment—Subsequent death of principal—Surety paying the balance—Claim to recover same from the principal's estate—Promissory note found to be unenforceable as contravening Money-lenders Act—Surety, if cannot recover money paid by him to wards such a promissory note.

In October 1930 a testator C borrowed from R. Ltd.

Amount due under it, got back the note and then applied to recover against the amount which he had paid. But it was note did not satisfy the requirements Money-lenders Act and was consequently either against S or against C. It was therefore contended that S could not recover against C the amount which he wrongly paid. Neither S nor C was aware of this defect in the note.

Held, that the general rule is that when a guarantor enters into an obligation of guarantee at the request of the principal debtor and makes the payments on default of the debtor, then there is an implied undertaking by the principal debtor to pay the guarantor so paid. The request which is to be implied pay if I do not and not "Please pay what any, which I am liable to pay and which is irrecoverable by the Money-lenders Act". Therefore entitled to recover from C's estate the (S) had paid. *Alexander v. Vann*, (1836) 511, followed. *In re CHETWYND'S ESTATE TRUST, LIMITED v. BROWN*, (1938) 1 Ch. 13.

PROHIBITION—Writ of—Quasi-judicial act of a corporate body—Declaration regarding a house that it is insanitary—Application of wrong test—Power to order demolition of house—Approval of independent authority being condition for the exercise of—Operation of writ after declaration—Corporate body if functions office—House unfit for human habitation—Meaning of.

The appellants are the owners of a house, and the respondents are a corporate body, constituted by the Singapore Improvement Ordinance, 1927, and entrusted

PUBLIC AUTHORITIES PORTN. ACT (1893).

81

and the respondents heard objections to the declaration. The respondents submitted to the Governor-in-Council the declaration in accordance with the provisions of § 59 of the Ordinance. If the Governor-in-Council approves the declaration, the respondents may require the owner to demolish the house. The appellants applied for a writ of prohibition on the ground that the respondents had acted *ultra vires* in making the declaration.

respondents must be regarded as functions in deciding whether the declaration should be revoked or submitted to the Governor-in-Council. (2) That the respondents were applying a wrong and an inadmissible test in making the declaration and deciding to submit it to the Governor-in-Council. They were therefore acting beyond their powers and the declaration is not enforceable and is *ultra vires*. The respondents gave the appellants no opportunity of applying for prohibition or *certiorari* before they sent the declaration to the Governor-in-Council. In requiring the demolition they would be carrying into effect the original declaration which indeed required the approval of an independent authority. There must remain something to which the prohibition can apply, some act which the respondents, if not prohibited may do in excess of their jurisdiction including any act which may be done by them in carrying into

LTD. v. SINGAPORE IMPROVEMENT TRUST.
(1937) A.C. 838—103 L.J. (P.N.) 152—157 L.T. 358.

PUBLIC AUTHORITIES PROTECTION ACT (1893) S. 1—Lunacy Act, S. 276—Visiting committee under—Appointment of medical officer by the committee—Dismissal of, with three months' notice—Power of visiting committee to dismiss without notice—Action for

The plaintiff then was prosecuting his claim for a superannuation allowance. This question was finally decided by the Minister of Health in November, 1930, against the plaintiff. In 1933 the plaintiff filed this suit against the visiting committee for wrongful dismissal and for return of his superannuation allowance.

Held, that the suit was barred by S. 1 of the Public Authorities Protection Act as inadequacy of notice complained of, and the neglect to pay the superannuation contributions were neglect of "an act done in pursuance, or execution, . . . of any Act of Parlia-

PUBLIC HEALTH ACT (1875).

ment" and the suit was not brought within 6 months of either of those acts. S. 276, sub Cl. (1) of the Lunacy Act, 1860, provides that the "visiting committee of every Asylum shall appoint . . . a medical officer . . ." and sub S. 3 provides that "the committee may remove any person appointed under this section." **MCMANUS v. BOWES**, (1938) 1 KB 98 = 157 L.T. 385 = 107 L.J. (KB) 51.

PUBLIC HEALTH ACT, (1875)—Rivers Pollution Prevention Act, 1876—Natural stream—Later sewage water discharged into it—If status changed to a sewer.

The plaintiffs are the owners of certain lands situated in the borough of Wenlock and they carried on brick and tile works at Blest Hill, Madeley. There was a water-course running through their property. The water-course began as a natural stream and flowed through Madeley, passing by a culvert through part of the plaintiffs' property. The culvert had been made by plaintiffs' predecessors in title and then this was a natural stream not vested in or repairable by the local authority. For several years past about 20 houses in Madeley town discharged sewage into the water course and later there were 44 more houses discharging sewage likewise. The defendant is the corporation of Wenlock liable to repair all sewers vested in them and to prevent sewers becoming a nuisance. The plaintiffs sued the defendants for a declaration that the water course was a sewer and that the defendants were liable to repair it.

Held, that it is not in law possible to say that a

Rivers Pollution Prevention Act, 1876: Such discharge is illegal as offending the Rivers Pollution Act and cannot have the effect of changing the status of the channel. **LEGG AND SON, LIMITED v. WENLOCK CORPORATION**, (1938) A.C. 204 = 107 L.J. (Ch.) 72 = 158 L.T. 265.

REVENUE—Estate duty—Testator bequeathing annuity to widow—Annuity paid out of general income—No fund set aside to meet the annuity—Death of the annuitant—Estate duty if payable—Estate Duty Ordinance, Hong Kong, No 3 of 1932, S. 25 (1) and (2)—Taxing Statute of Dominion or Colony—Evolution of British statute and decision of British Courts—

Income of the estate as and when the annuity became due. The widow died subsequently and thereupon her annuity ceased. The respondent claimed that upon the death of the widow estate duty be amenable under

REVENUE.

passing by the will can properly be treated as an interest in the property within the meaning of S. 25 (2). The phrase "any property, or any estate or interest in any property" coupled with the words "stands limited" refers to definite property or an estate or interest in it, which actually exists and can be properly defined. The exemption given by S. 25 (1) does not apply and estate duty is payable. In interpreting a taxing statute of a Dominion or a Colony which contains, on its face, no reference to its origin or to previous legislative history, it is not permissible to consider the evolution of any British statute or provision from which the terms or whole sections of the enactment under consideration may have been taken, or to rely on decisions as to the true interpretation in the courts of Great Britain of those terms or sections. (S. 25 of the Estate Duty Ordinance, 1932, runs thus "S. 25 (1) If estate duty has already been paid in respect of any settled property since the date of the settlement, upon the death of one of the parties to a marriage, no estate duty shall be payable on the death of the other party to the marriage unless such person was at the time of his or her death or had been at any time during the continuance of the settlement competent to dispose of such property (2) For the purposes of this section, the term settlement means any deed, will, agreement for a settlement or other instrument, or any number of instruments, whether made before or after or partly before and partly after the commencement of this Ordinance, under or by virtue of which instrument or instruments any property, or any estate or interest in any property, stands for the time being limited to or in trust for any persons by way of succession, and the term settled property means the property comprised in a settlement." **ARMSTRONG v. ESTATE DUTY COMMISSIONER** (1937) A.C. 885 = 106 L.J. (P.C.) 133 = 157 L.T. 376.

Income tax—Company manufacturing sugar—Advances by Government—If trade receipts—Liability to income tax—British Sugar Industry (Assistance) Act 1931.

The Government made advances to a company carrying on the business of manufacturing sugar from beet root grown in Great Britain, under a statutory scheme embodied in the British Sugar Industry (Assistance) Act, 1931. In that year, the advances were intended to be used and could properly have been used to meet their

gains for the year in which they were received. The amounts were assessable to income tax under case 1 of Sch. D to the Income-tax Act 1918.

Per Lord Macmillan—The word 'advances' is

or interest in any property stood, during the lifetime of the widow, limited to or in trust for any person by way of succession. Estate duty was paid in respect of the property passing under the will upon the death of the testator.

Held, that there was property of the testator in which the widow had an interest ceasing at her death, and to

v. SMART

(1937) A.C. 697 =

106 L.J. (K.B.) 185 = 156 L.T. 215

Income tax—Guarantee to make up deficiency in the fixed dividend or pay the entire dividend to share holders of a company—Payment by guarantor contingent and variable—If annual payments—Liability to tax—R. 21 of the General Rules of the Income Tax Act, 1913.

pany jointly and with the trustees that in case the

if

ROAD TRAFFIC ACT (1934).

SOLICITOR.

fixed dividend. In some of the years, the D company made no profits, in others the profits made were insufficient to pay the dividend in full. Assessments were made in respect of the same paid by the appellants

all Schedules of the Income-tax Act, 1918. The fact that the payments were contingent and variable in amount does not affect the character of the payments as 'annual payments'. The appellants were properly assessed

Per Lord Maugham—In R. 21 the word 'annual' must be taken to have, like annuity, the quality of being of recurrence and in this case necessary quality of recurring

LIMITED v. INLAND REVENUE
(1937) A.C. 785—196 L.J. (K.B.) 138—167 L.T. 396.

ROAD TRAFFIC ACT (1934)—*Passenger vehicle—Meaning of—Ford V. 8 Utility car, is a passenger vehicle.*

A Ford V. 8 Utility car was constructed as follows.—The engine and chassis were similar to those used in the manufacture of Ford V. 8 passenger saloon motor cars

foot passenger who is on the carriage way at such crossing, and every such foot passenger shall have precedence over all vehicular traffic at such crossing. While the plaintiff was crossing a road in a pedestrian crossing marked by Belisha beacons, he was struck by the defendant's motor car. He was visible to the defendant.

The defendant pleaded contributory negligence on the part of the plaintiff in that he did not keep a proper look out to see that the defendant's motor car was approaching.

Held, that the Regulations are so framed as to make it impossible, when they apply, for the defence of contributory negligence to be raised. Regulation 3 says that unless the driver can see that there is no foot

such a case that the cause of the accident can be negligence of the plaintiff, because *ex hypothesi* the defendant, if he has done his duty, has already stopped. BAILEY v. GEDDES, (1938) 1 K.B. 156—107 L.J. (K.B.) 38.

SHIPPING—*Action in rem for damages against ship-owners—Arrest of ship—Release of, on bail—Subsequent defendants—Charterers held to indemnify from ship-owners to have the bail given to plaintiffs (owners of cargo)*

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SUM. JURIS. (MARRIED WOMEN) ACT (1895). | TORT.

solicitors were guilty of certain acts of professional misconduct. The solicitors contended that as from the date when they ceased to represent the defendants for whom they had acted, the judge ceased to have jurisdiction over them in respect of matters that happened before that date.

Held, that the jurisdiction of a judge of the High Court who hears a case to exercise control over the conduct of solicitors in the case, as officers of the Court, does not come to an end if they cease to be solicitors on the record before an application is made to him to exercise that jurisdiction. *Simons v Gilbey*, (1838) 6 Dowl. P. C. 310, followed. BRENDON v SPIRO

(1938) 1 K.B. 176 = 157 L.T. 265 = 107 L.J. (K.B.) 481.

SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895—*Desertion by husband—Claim by wife for maintenance—Defence justification—Adultery of wife—Statement by wife about the doubtful paternity of a child—If admissible in evidence*

The parties were married three children of the marriage tenance from the husband on deserted her in 1937. The defendant reasonable cause for leaving the wife in that she was guilty of adultery. As evidence he wanted to let in evidence of a statement by her that she told him that he would have to keep the last child whether his or not. The wife was also found to have written an indecent letter and there were also indecent letters in her possession.

Held, the evidence of the admission of adultery was admissible in evidence. It was not tendered to bastardize the child. When a husband comes to Court and

had reasonable cause to leave the
ROAST (1938) P.

TORT—Damages—Injury as a result of
Death of the injured person a few days after accident—Law Reform (Miscellaneous Provisions) Act of 1934—Loss of expectation of life—Claim for—Cause of action if survives to personal representatives.

A girl of two motor-car collided the defendant amputated. For the direct result of the girl in two capacities wife as dependant 1846 to 1908, (2) damages for the benefit of the estate

died (Green, L.J., dissenting).

Held (by the House of Lords), that the injured person is damaged by having cut short the period during which she had a normal expectation of enjoying life

Y. D. 1938—92

representative. ROSE v. FORD. (1937) A.C. 826 = 106 L.J. (K.B.) 576 = 157 L.T. 174.

—*Master and servant—Independent contractor—Employer sending one of his apprentices to work with the contractor—No request by contractor for loan of his services—Negligence of such apprentice—If contractor liable or the employer*

The defendants L Company were the owners of paper mill and in 1935 were erecting a new power house for the electrical equipment required for the mills. The electrical installations were entrusted to an independent contractor (another Company E). That company was short of men and therefore by an arrangement with L Company some men (including the plaintiff C) were borrowed from the K Company and as a result he (C) was now in the work of the L Company. It was the custom of the defendants L Company, when electrical contractors were at work on the premises, to instruct their electrical apprentices to work with the other electricians and under that system M was working under L Company. On the scaffolding for the roof defective. That defendants The plank broke and plaintiff sustained injuries, whereupon the plaintiff filed this suit for damages.

Held, (1) that the defendant company was not liable as occupiers of the place where the platform was because they had left it to competent contractors to do that work. In the course of doing that work, the contractors used some planks not supplied by the defendant for that purpose. The defendant did not control them in doing the work, (2) but the defendant was liable for the tortious act of its servant M. He is to be regarded as was an apprentice of L and L. der J. The E Company did not re L Company was in fact using J out their duties of instructing the servant of the position in he was not fit. *decide*, (1893) 1

Q.B. 629 and *Bain v Central Vermont Ry Co*, (1921) 2 A.C. 412, distinguished. CLELLAND v. EDWARD LLOYD, LIMITED (1938) 1 K.B. 272 = 157 L.T. 236 = 106 L.J. (K.B.) 628.

public park for a pool—Pence of

ners and occupied a pool the appearance of loads of sand of the pool A

child playing in the sand was injured rather severely by

"to rake the bottom of the pond with a rake" This rake would not go into the sand at the side of the pond but only on the top of the sand, so that if anything got embedded in the sand the rake would not disclose it. *Id.*

SUM. JURIS. (MARRIED WOMEN) ACT (1895).

Before the trial of the action concluded, the solicitors engaged by the defendants first ceased to act for them and new solicitors were on record at the date of the judgment. The plaintiffs claimed costs of the action personally from the original solicitors on the grounds that the said solicitors while acting in the action as such solicitors were guilty of certain acts of professional misconduct. The solicitors contended that as from the date when they ceased to represent the defendants for whom they had acted, the judge ceased to have jurisdiction over them in respect of matters that happened before that date.

Held, that the jurisdiction of a judge of the High Court who hears a case to exercise control over the

P. C. 310, followed. BRENDON v SPIRO.
(1938) 1 K B. 176 = 167 L T. 265 =
107 L J. (K B) 481

SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895—*Deception by husband—Claim by wife for maintenance—Defence justification—Adultery of wife—Statement by wife about the doubtful paternity of a child—If admissible in evidence.*

The parties were married in three children of the marriage. Maintenance from the husband on deserted her in 1937. The defendant reasonable cause for leaving the wife in that she was guilty of adultery. As evidence he wanted to let in evidence of a statement by her that she told him that he would have to keep the last child whether his or not. The wife was also found to have written an indecent letter and there were also indecent letters in her possession.

been the father, it was hit by *Russell v Russell*, (1924) A. C. 687. It is admissible to prove that the husband had reasonable cause to leave the wife ROAST v ROAST
(1938) 1 K B. 167 = 167 L T 586 =

Loss of expectation of life—Claims for—Cause of action if survives to personal representative.

A girl of twenty-three was seriously injured in a

TORT.

and that the loss, *damnum*, = capable of being estimated in terms of money. So a living person can claim damages for loss of expectation of life. The cause of action was vested in the deceased before and when she died and by virtue of the Act of 1934, it survives for the benefit of her personal estate and passes to her personal representative. ROSE v. FORD. (1937) A C 826 = 106 L J. (K.B.) 576 = 157 L T 174.

—Master and servant—Independent contractor—Employer sending one of his apprentices to work with the contractor—No request by contractor for loan of his services—Negligence of such apprentice—If contractor liable or the employer.

The defendants L Company were the owners of paper power house for the mills. The to an independent hat company was short of men and therefore by an arrangement with L Company some men (including the plaintiff C) were borrowed from the K Company and as a result he (C) was now in the work of the L Company. It was the custom of the defendants L Company, when electrical contractors were at work on the premises, to instruct their electrical apprentices to work with the other electricians and under that system M was working under of K Company. On the a scaffolding for the roved defective. That defendants The plank broke and plaintiff sustained injuries, whereupon the plaintiff filed this suit for damages.

Held, (1) that the defendant company was not liable as occupiers of the place where the platform was because they had left it to competent contractors to do that work. In the course of doing that work, the contractors used some planks not supplied by the defendant for that control them in doing was liable for the = to be regarded as = rentice of L and L S Company did not

ask L to send M. The L Company was in fact using J as a means of carrying out their duties of instructing their apprentice M. Therefore M was the servant of L and since they chose to put him in the position in he was not fit, *id est*, (1893) 1 K) Co. (1921) v D. EDWARD (1938) 1 K B. 272 = 157 L T. 236 = 106 L J (K B) 628.

—Negligence—Paddling pool in a public park for

TRADE ASSOCIATION

only anything that was lying on the surface of the sand. A few days before the accident to the plaintiff child, another child was injured in the pond close to the place where the plaintiff was injured.

Greaves-Lord, J.—Held, that the plaintiff was an invitee, that the presence of the glass was a hidden danger of which the defendants ought to have known, that the rake was useless to ascertain whether there was anything imbedded. Council did not exercise they should have exercised invited to the pond and

Held, on appeal, that relationship between the was that of invitor and invitee, and treating the case as

subjected when they paddled in the pool or by seeing that the children did not paddle in the pool at all, and that the rake that they provided was not sufficient to remove anything embedded in the sand. *ELLIS v. FULHAM BOROUGH COUNCIL* (1938) 1 K B 212—157 L T. 380—107 L J (K B) 84

TRADE ASSOCIATION—*Policy of prave protection—Power to place a member's name on Stop List—Demand for payment as an alternative—Rule of illegal and ultra vires—Larceny Act, 1916, S. 29 (1)—Person writing letter demanding payment—Whether criminally liable.*

In pursuance of rules of a Trade Association, the Association at than the list of Association is, that the name of, above rules or any other person be Stop List unless within twenty-one days to the Association a fine to be fixed. The appellant, a member of the Association, declaration that the rule is illegal and/or necessarily contravening a provision of it contained in S. 29 (1) of the Larceny Act, 1916. It was argued that the pronouncing of such an order would constitute a felony within the meaning of S. 29 (1) of the Act.

Held, that, if the Association bona fide exercised the power with the bona fide intention only of carrying out the trade policy, they would not be demanding the payment without reasonable and probable cause. The writer of a letter demanding payment cannot be convicted under the provisions of the Larceny Act. To put a man's name on a Stop List under the circumstances of the case is not a wrongful act. It is an act done in lawful furtherance of business interest and though done in combination is done without any express intent to injure the pe

Per Lord, lawfully, it is (S. 29 of the thereof, any with menaces any property of felony." (1937) A O. 797—108 L J (K B) 495—157 L T. 399

WILL.

TRADE MARK—*Registration of an invented word—The word also a geographical name which manufactures similar goods—Is registrable.*

In connection with a preparation of a tonic, an extract of liver and iron, a trade mark "Livron" was registered. Livron was also the name of a town in France where the manufacture of chemical and medicinal preparation was carried on. The French company applied

under the 'is not an (3) of the 3. 7 of the , no and the

only name of an existing place, and no Englishman any other name if he wished to refer to

(ii) The word is according to its ordinary geographical name within the meaning of (iii) It cannot fall under cl (5) also is no evidence of the distinctiveness of the

The mark as *hypothetical* the name of a place, and the name of a place where medicines of a similar character are manufactured and the business in medicines being of an international character, it cannot be held that the mark is distinctive (iv) Even if the matter comes within one of the 3 paragraphs, yet the Registrar on the original application would have had a discretion and on the

Trade Marks Act, 1905, as amended by S. 7 of the Trade Marks Act, 1919, provides:—"9. A registrable trade mark must contain or consist of at least one of the

Appeal Trade Marks Act, 1919, provides:—"9. A registrable trade mark must contain or consist of at least one of the

157 L T. 225—106 L J (Ch) 352

WILL—*Charity—Gift to corporation of armour and antiques to be kept in public hall for public inspection—Valid as educative—Gift of public hall for such public purposes as the corporation may consider desirable—Valid as a gift for the benefit of the inhabitants of the particular locality.*

By his will a testator after certain legacies, etc., gave his "collection of arms and antiques and articles de vertu to the corporation of S subject to the condition that the said corporation shall deposit the same in one of the rooms of the public hall hereinafter mentioned where the same shall be kept open to inspection by the public subject to such reasonable

by the of his upon esame and with and out of the monies thereby produced spend for certain purposes set out in the will and the rest to be held upon trust to apply the same in the purchase of a suitable site of land at S and in or towards the erection on such site of a public hall which site and hall when completed shall be presented by the executor

WILL.

to the corporation of S to be used by the said corporation for such public purposes as it may from time to time consider desirable. Question arose whether the trust for erection of a public hall and the gift of arms, etc., was valid.

Held, first with regard to the gift of the public hall that the gift was a good valid charitable gift as the site and public hall were to become the property of the corporation of S and accordingly to be held, like its other corporate property for the benefit of the borough. The fact that the will says it is to be a public hall and used for "such public purposes as the corporation may from time to time consider desirable" does not render the gift invalid. The words "public purposes" here are limited to public purposes for the benefit of the inhabi-

collection to be inspected by the public. This is an educational object and is therefore charitable *In re SPENCE, BARCLAYS BANK, LIMITED v. MAYOR, ETC OF STOCKTON ON TEES.* (1938) 1 Ch 96.

(1938) 1 Ch 96.

107 L J (Ch) 1.
 —Construction.—absolute legacy—Modification to life estate by codicil—Death of legatee before testatrix—Effect—Legacy—Whether lapses.

A testatrix by her will after bequeathing certain specific legacies directed that her trustees should stand possessed of the residue of her real and personal estate in trust for a certain sum to her married daughter G. By a codicil of later date the testatrix directed that her trustees should hold the legacy given to G upon trust to invest the same and to pay the income thereof to her during her life without power of anticipation and after her death to hold both the capital and income in trust for the persons who would on the death of her daughter be the testatrix's own statutory next of kin under the Administration of Estates Act, 1925, as if the testatrix had died possessed thereof intestate and without having been married G having predeceased the testatrix the question was raised whether the legacy bequeathed to her lapsed on her death.

Held, that the legacy was a settled legacy and the death of G the tenant for life did not cause a lapse *In re Pinhorn* (1894) 2 Ch 276 and *In re Powell*, (1900) 2 Ch. 525 relied on *In re HARWARD, NEWTON v. BANKS.* (1938) 1 Ch 632.

—Construction.—Bequest to A for life—Superadded power to deal with property as if it were her own—If the power exercisable by will or only inter

WILL.

has given her a life interest as if it were her own. There was given in this will a power to the donee of disposing of the property both during her life and after her life by a testamentary power of appointment. *In re LAWRY ANDREW v. COAD.* (1938) 1 Ch. 318.

107 L J. (Ch) 170 = 158 L T. 493.

—Construction—Gift to compound class—Whether grandchildren take as joint tenants or tenants in common—Double words of severance when necessary.

The rule stated in Jarman on Wills, ¶ 7th Ed. 1772, that, where there is a gift to a compound class, for example to A for life and at his death to be divided amongst his children then living and the issue of children then dead the issue to take their parents' share, only the children take as tenants-in-common, and double words are required to enable the issue as tenants-in-common and apply where the gift is in a class which is practically impossible to divide, and in such a case the

words of division can be taken to apply to the original class of children as also to the substituted sharers, namely, the grandchildren *In re FROY (DECEASED) FROY v. FROY.* (1939) 1 Ch 566 = 158 L T 518.

—Construction—Legacies—Provision that certain legacies shall abate if estate insufficient for paying all—Estate found insufficient—Delay in paying legacies—Interest on legacies—If also to be taken from the abated legacies and paid to the benefiting legatees.

By his will a testator bequeathed a large number of pecuniary legacies. Among them were two legacies to W N W and C. D. W. two of his nephews. The will contained a clause that in the event of the estate not being sufficient to pay all the funeral and testamentary expenses, etc., and legacies in full, then "in such case the pecuniary legacies hereinbefore given to my nephews, W. N. W. and C. D. W. (they being otherwise provided for) shall abate equally." The legacies were not paid within one year after the death of the testator. The estate also proved insufficient for payment of all legacies. Interest became payable on the other legacies under the law as the legacies were not paid within one year. The question arose whether interest should be added to the respective legacies entitled to the benefit of the direction as to abatement so as to be payable in priority to the pecuniary legacies subject to the burden of that direction.

Held, that where the estate is sufficient to pay the whole of the legacies in full, and there is a residue, it may be unjust that the residuary legatees, who are entitled to nothing until all the legacies have been paid, should benefit by the delay in paying them which they would do if the interest which the money has been

107 L J (Ch) 14 = 158 L T 147

—Construction—Will of 1930—Bequest of "all my possessions to B."—B. died, leaving equally amongst all my relations—Testatrix a spinster—Accretion of branch-wards—If whole estate disposed of—Administration of Estates Act, 1925.

A testatrix B a spinster, died in 1930 having executed a will a few days before. The will provided that she wished "Ethel and Hilja Harding to take possession

The testator died. His sister A. L. predeceased him and the other sister C. L. died after having made a will and the question was raised if C. L. had an absolute power because if she has a general power of appointment over the property given to her by her brother's will, the will will operate as an exercise of that power.

Held, that the power was not merely an administrative power but a beneficial power which gives the donee power to deal with the property in which the testator

WORKMEN'S COMPEN. ACT (1925), S. 10.

all my possessions to be held in trust after my death and divided equally amongst all my relations". The testatrix had no nearer relations than her sister's children, her sisters also having predeceased her. There were also

died inter-
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disposition

class than would the words my relations and they would have been persons, other than a husband or wife, who would have been entitled to the personal estate of the deceased by virtue of the Statute of Distributions.

be infinite. The result of the direction in the will that the relations should take equally is that the persons entitled under the statute having been ascertained, they would not have taken in the shares indicated by the statute, but would have taken equally. The 1925 Act has not made any change in this respect. Only the persons to take will be the persons under the Administration of Estates Act, 1925 and not under the Statute of Distributions. It does not take in all the relations recognised by the 1925 Act as potential beneficiaries. *In re BRIDGEN; CHAYTOR v. EDWIN.*

(1938) 1 Ch 205=107 L.J. (Ch.) 124=158 L.T. 238.
WORKMEN'S COMPENSATION ACT (1925).

S. 10 (1)—C

and collector

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rent contracts of service—Accident in colliery employment—Basis of compensation.

A workman, a collier, in addition to his employment as a collier in the appellant's mine, acted as sub-checkweighman at the colliery. He was also employed by his

WORKMEN'S COMPEN. ACT (1925), S. 10.

trade union to collect subscriptions on Fridays from the members. He was allowed time off by his colliery employers when doing these two duties and for the time occupied in doing these two duties he was not paid by and the check the ensure give the

colliery, and the compensation which he was entitled to get out of funds belonging to the Union. The collier met with an accident in the course of his employment as collier and was totally incapacitated. He was given his wages as collier alone as checkweigher and union he was entitled to them also Workmen's Compensation Act,

1925, as earned in pursuance of concurrent contracts of service within the meaning of the section. S. 10 provides that "For the purposes of the provisions of this Act relating to 'earnings' and average weekly earnings of a workman, the following rules shall be observed... (1) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident."

head were earned service within the Workmen's Compensation Act and that the workman was entitled to have the other incomes also taken into account in fixing the compensation payable to him. *UNSWORTH v. PEASE AND PARTNERS, LIMITED* (1937) 2 K.B. 504=106 L.J. (K.B.) 868=157 L.T. 75

SUPPLEMENT.

AGRA PRE-EMPTION ACT (XI OF 1922), S. 12—
Arazdari—Co-sharer in the same khewat—If has the right of pre-emption.

By S. 12 of the Agra Pre-emption Act a coparcener in a petty proprietary interest has the right of pre-emption. Where a plaintiff is a co-sharer in the same *khewat* in which the arazdari in dispute is situated he has a right of pre-emption. (*Iqbal Ahmad, f.*) JAGDISH RAI v. SURAJ KUMAR SINGH.

1938 A.W.R. (H.C.) 847.

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1938 A.W.R.

—S. 45—Separate suit under—When
See AGRA TENANCY ACT, SS. 44, 45 AND 1

—S. 79—Ejectment—Review proceed
tion with—Use of, as lever to obtain
takair claim—Propriety—Revenue

In proceedings for review of order of ejectment, it is most improper for a Court to bring pressure on the ejected tenants to satisfy the *takair* claims against one of them, before proceeding with own merits. Where it had been collecting the *takair* due, it is such that the Board should exercise its set it right (*Darling, S.M. and Mehta, J.M.*) KHACHEKOO v. MOHAMMAD HASHIM.

1938 B.D. 918

—S. 122—Object of—When could be invoked. See
AGRA TENANCY ACT, SS. 44, 45 AND 192.

1938 B.D. 914

—S. 197 (b)—Grove—Transferability—No prohi
dution in *waqf ul-ars*—Countenancing of transfer by
landlord on prior occasion—Effect of

The Courts would not allow words to be introduced in the *waqf ul-ars* which are not actually present. Where in the *waqf ul-ars* of a village, the right to transfer grove rights is not specifically forbidden, and where further such a transfer has been countenanced by the landlord, in the past, such rights could not be denied particularly after the passing of the Tenancy Act of 1926. Any custom which might have existed has been broken by the landlord countenancing such transfer (*Darling, S.M. and Mehta, J.M.*) MOHAMMAD UNAR v. RAM PIARI.

1938 B.D. 916

—S. 252—Revision—Competency—Order under R
13 of O. 9, C. P. Code.

BEN. LAND REV. SALES ACT (1859), S. 36

No revision lies under S. 252 of the Agra Tenancy Act against a Commissioner's order under R. 13 of O. 9, C. P. Code, refusing to set aside an *ex parte* decree, as O. 43, R. 1 (d) clearly provides that an appeal would lie therefrom. (*Mehta, f.*) JAI DEVI v. CHAUDHRI RAGHUBIR NARAIN 1938 A.W.R. (B.E.) 388.
ARBITRATION—Arbitrator or referee—Statement of Council appointing referee—Latter empowered to examine parties—Character of referee, if any, there-

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ownership in some one else also—Maintainability.

Under the Bengal Irrigation Act, no one else than a registered owner who has been awarded by the canal department the right to receive rent can sue for rent for an owner brings a t the rent was due to Mohammad Noor, f.) RITA RAI

19 Pat L T 897.

BENGAL LAND REVENUE SALES ACT (XI OF 1859), S. 36—Object of—Revenue sale during pendency of suit by mortgagee of the property—Purchase, benami for mortgagor—Suit by mortgagee after decree to declare sale fraudulent, if barred by S. 36

The object of S. 36 of the Bengal Land Revenue Sales Act is to discourage benami purchases at sales and with that in view the Legislature has said that a suit to oust the *benamidar* shall not lie. What the Legislature intends to prohibit appears to be this that a purchaser having elected to make his purchase in a *benami* name, he could not thereafter come into Court to have the *benami* character of the transaction established and the *benamidar* ousted by Court. The section is not to be construed so as to enable the sham title of a *benamidar* to be set up against a creditor of the real owner. Where during the pendency of a mortgage suit, the estate was sold for default in the payment of the land revenue by the mortgagor proprietor under the Bengal Land Revenue Sales Act, and it is purchased in auction in name of a third person *benami* for the mortgagor

BEN. MUNICIPAL ACT (1932), S. 295.

where after the passing of a preliminary decree in the mortgage suit, the purchaser obtains possession, it is open to the mortgagee decree holder to institute a suit to declare that the revenue sale was fraudulent and void and inoperative as against his mortgage lien and S. 36 of the Act could not be pleaded in bar of such a suit, for that section has no application at all to such a case. (*Dhavit and Rowland, J.J.*) **CHATRADHARI LAL v. BHAGWATI PRASAD.** 178 I.C. 357=5 B.E. 91.

BENGAL MUNICIPAL ACT (XV OF 1932), S. 295—Maintenance of meter in good condition—Duty of Municipality.

Under S. 295 of the Bengal Municipal Act, the duty of maintaining the meter in good order rests upon the Municipality and not on the owner or occupier of the house. It is true that under rules framed by Government which were adopted as bye laws by the Municipality, the entire costs of house connection including the expenses of a meter had to be borne by the owner or occupier of the house, but there is no rule or bye law that the costs of maintaining the meter in good order have to be met by the house-owner and not by the Municipality. (*B. K. Mukherjee, J.*) **SARAT CHANDRA GUHA v. KALIPADA KAY.** 111 C.L.J. 463.

S. 309 (d)—Non repair of meter—Power of Commissioner to cut off water.

S. 309, (d) of the Bengal Municipal Act, does not empower the Commissioner to cut off water supply on the ground of any defect in or non-repair of the meter. (*B. K. Mukherjee, J.*) **SARAT CHANDRA GUHA v. KALIPADA KAY.** 68 C.L.J. 463.

BENGAL TENANCY ACT (V S. 26 F (4) (a)—Cv sharer landlord

Tenancy Act, is competent to apply under sub S (4) (a) to join as a co applicant in the application under S. 26 F (1). In such cases, the applicant will not be bound by the special rule of limitation prescribed in S. 26 F (4) (a), but may make his application within a reasonable time of his knowledge of the sale of the occupancy holding. (*Biswas, J.*) **BENI MADHAB v. TAHERAN-NESSA.** 43 O.W.N. 110.

S. 30 (2)—"Prevailing rate"—Meaning of.

The "prevailing rate" referred to in S. 30 (2) of the Bengal Tenancy Act is to be determined as a question of fact, and not to be deduced inferentially from the actual rates which may be found to be in force in the locality concerned. In many instances, the prevailing rate will no doubt be one single rate but not necessarily so. The

limits within which it varies may be ascertained. As to what the limits of variation should be, will depend not merely on the extent of the actual variations, but also on the number of cases which show such variations or the extent of the areas which may be involved. In areas to which S. 31-A of the Act is not extended, it is a fair rule to adopt, in order to ascertain the prevailing rate to consider whether or not it is the rate, or substantially the rate, paid by the majority of the raiyats in the locality. (*Biswas, J.*) **DHIKENDRA NATH v. GOLJIANESSA.** 43 O.W.N. 93.

BIHAR MONEY-LENDERS ACT (1938), S. 11.**Ss. 173 (3) and 174—Order setting aside sale under both provisions—Appellability.**

Where an application by a judgment-debtor in a rent decree to set aside a sale held in execution of that decree under S. 174 of the Bengal Tenancy Act and also on the ground that the purchase was barred under S. 173 (3), is allowed under the provisions of both, the order allowing the application is open to an appeal by one who was a party to the rent suit and to the application. (*Edgley, J.*) **ADAM ALY KHAN v. JAGADISH CHANDRA.** 43 C.W.N. 108.

S. 174 (5)—Deposit under—When to be made—Power of Court to extend time.

S. 174 (5) of the Bengal Tenancy Act contemplates that the amount recoverable in execution of the decree must be deposited with the appellate Court immediately after the presentation of the appeal to the Court in question and before its registration. The deposit is a condition precedent or at any rate a contemporaneous act in connection with the admission of the appeal. The Court has no authority to extend the time within which the deposit might be made. (*Edgley, J.*) **SUDHIR CHANDRA v. NAZIR MANUD.** 111 C.W.N. 108=68 C.L.J. 402.

BERAR LAND REVENUE CODE (1896), Ss. 38 and 178—Nature of rules contemplated by S. 38—If comes into operation by itself—Basis of their validity—Publication in gazette, if only directory.

General rules contemplated in S. 38 of the Berar Land Revenue Code are not rules of procedure but rules to guide the Revenue Officers in the disposal of Govern-

ment is a condition subsequent to the making of the rules and hence directory. The non-observance of that condition would not prevent the rules from taking effect. (*Gruer and Niyogi, J.J.*) **MADHAO GOPAL v. SECRETARY OF STATE.** 1938 N.L.J. 439.

S. 41 (3)—Right of suit in Civil Court—Adverse decision by Revenue Officer on Government's right to enhance assessment.

Where a person questions the right of Government to enhance the assessment on his land, but the Revenue Officer decides it adversely to him, he is clearly entitled to sue for establishing his right under sub S (3) of S. 41 of the Berar Land Revenue Code. (*Gruer and Niyogi, J.J.*) **MADHAO GOPAL v. SECRETARY OF STATE.** 1938 N.L.J. 439.

S. 11 of the Bihar Money Lenders Act has to be construed as not intended to affect a decree already passed, a Court cannot therefore go behind a preliminary decree already passed by it in a mortgage suit long before the Act. The Court cannot therefore refuse to pass a final decree for sale in accordance with the preliminary decree on the ground that S. 11 of the Act came into force before the application for final decree was made. (*Rowland and Manohar Lal, J.J.*) **MUHAMMAD YUNUS v. CHAMPANANI RIBI.** 1938 P.W.N. 885=19 Pat L.T. 875.

BIHAR MONEY-LENDERS ACT (1938), S. 11.

—S. 11. *Force of law given. If not as before.*

The existing Indian law is void under S. 107 (1) of the Government of India Act, 1935.

Wort, J.—S. 11 of the Bihar Money Lenders Act, whether it be described as a mere rule of limitation or as a provision of substantive law, most certainly deprives the Court of the discretion which the Court has under S. 3 of the Usurious Loans Act of 1855 in those cases to which the Usurious Loans Act does not apply. S. 11 of the Bihar Money-Lenders Act is therefore repugnant to the earlier existing Indian law and to the extent of the repugnancy is void under S. 107 (1) of the Government of India Act of 1935.

Dhale, J.—S. 11 of the Bihar Money Lenders Act has not been competently enacted so as to supersede S. 2 of the Usury Laws Repeal Act and must be treated as void.

J. J. SADAANAND JHA & AMAN KHAN

1938 P W N. 915 (F B)

BOMBAY HEREDITARY OFFICES ACT (III OF 1874), S. 30—Scope—Principle underlying—Rule of lineal primogeniture—Applicability before 1910—Effect of amending Act III of 1910.

The real intention of S. 30 of the Bombay Hereditary Offices Act, as it stood before the amendment of 1910 that the nearest heir of a deceased walandar was to be determined according to the rule of lineal primogeniture. That was what the original S. 30 contemplated, and the amending Act of 1910 merely made explicit the real intention of the section. The amendment of 1910 did not introduce the principle of lineal primogeniture for the first time (*Wadia, J.*) **BASANGOWDA & FAKIR GOWDA.** 40 Bom L R 1288

—S. 36 proviso (3)—*Suit to declare plaintiff's right as next defendant—representative.*

—*Limitation—Limitation Act, Arts. 14 and 120*

successor to the watan. The suit is really one for a declaration and is governed by Art. 120 of the Limitation Act. (*Wadia, J.*) **BASANGOWDA & FAKIR-GOWDA.** 40 Bom L R 1288.

—S. 58—Officiating kulkarni—Status of—Public servant. *See* CR. P. CODE, S. 197.

40 Bom L R 1286.

C. P. DEBT CONCILIATION ACT (1933), S. 13.

BUDDHIST LAW (Burmese)—Ecclesiastical law—

UPPANA, J. & KALIA & K. ARSANA.

1938 Rang L R. 678

—(Burmese)—Ecclesiastical law—*Poggahka owner—Right to appoint successor.*

According to the Burmese Buddhist ecclesiastical law

dike on his death vests in the Sangha at large. (*Braund, J.*) **U THITA & U AKESHINNA.**

1938 Rang L R 678.

CALCUTTA MUNICIPAL ACT (III OF 1923), S. 363—Erection of portion of building without sanction—Order of demolition by Magistrate—Power of latter to enquire into propriety of withholding sanction.

The erection of a portion of a building without obtaining the written permission of the Corporation is unlawful and the Corporation can under S. 363 of the Calcutta

Magistrate ion. The

power to

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v. CHIEF

CALCUTTA.

68 C L J. 476 = 43 W N. 176.

—S. 363—Reconstruction of building without sanction—Power of Magistrate to order demolition

The mere fact that there has been reconstruction of a building without sanction does not give the Magistrate a right to order demolition under S. 363 of the Calcutta Municipal Act, unless there has been erection of a new building or alteration of or addition to the existing building within the meaning of the Act (*Lerbyshire, C. J. and Bartley, J.*) **SHAIK BADLI MEAH & CORPORATION OF CALCUTTA** 68 C L J 478.

CENTRAL PROVINCES COURTS ACT I OF 1917, Ss. 14 and 26—District Judge and Additional District Judge—Distinction—Appeal presented to latter, when presentation should be to the former, if in order

S. 14 of the Central Provinces Courts Act only

Courts,

sen is

Judge

others

are *Central Provinces and Berar* judges. S. 14 of the Act makes a distinction between the District Court and

when an appeal is presented to an additional judge, when it ought to have been presented to the District Judge it could not be said to have been presented to an improper Court. (*Nyogi, J.*) **GHULABHAND & KISHANLAL** 1938 N L J 451.

CENTRAL PROVINCES DEBT CONCILIATION ACT (II OF 1933) S. 13 and Berar Land Revenue Code (1928), S. 161 (c)—Sale under S. 13 of the

—S. 110—Leave to appeal—Affirming judgment on merits—Judge of High Court differing on question of academic interest—If a good ground.

C. P. CODE (1908), S. 115.

Where both the Judges of the High Court agree on the merits with the judgment of the Court below, but differ as between themselves on a question of mere academic interest, leave should not on that ground be granted to appeal to His Majesty in Council. (*Wort, Ag. C. J. and Manohar Lall, J.*) JOGENDRA NARAIN SINGH v. RADHA PRASAD SINGH

—S. 115—

petition—Power of Court—Right of suit under O. 21, R. 63. See C. P. CODE, O. 21, RR. 58, 60 AND 63 AND S. 115.

1938 A.L.J. 1118

—S. 144—Sale in execution of *ex parte* decree—Judgment debtor settling it aside by deposit under O. 21, R. 89—*Ex parte* decree also afterwards set aside—Judgment-debtor's right to refund of compensation deposited for auction purchaser.

If a judgment debtor against whom an *ex parte* decree was passed chooses to set aside the sale held in execution of that decree by making the necessary deposit under O. 21, 1.

decree a be entu had dep " Such a c with the is made which the... entitled to a refund of such compensation money as a benefit by way of restitution within the meaning of S. 144, C. P. Code (*Edgley, J.*) GORAKHYNATH v. NARAYAN CHANDRA, 43 O.W.N. 104.

—S. 144—Scope—Money due under decree—Payment to vakil of party—Subsequent reversal of decree—Application for restitution against party—Maintainability—Payment to vakil not certified to Court—If bar to restitution.

Where money due to a party under a decree is paid to

whose vakil the money was paid S. 144 of the C. P. Code is sufficiently wide to cover such a case. The fact that payment to the vakil is not certified to the Court will not defeat the application for restitution (*Burn and Stodart, J.J.*) HANUMANTHAPPA v. GOOLAPPA, 48 L.W. 945

—O. 1, R. 1—Same transaction—Relief in respect of, claimed by defendant against co-defendant—Such defendant

Where co-defenda with referee added as a common

Ag. C. J. and Manohar Lall, J.) NILURIPATRA COAL CO. LTD v. NORTH BURRAKKAR COAL CO. LTD, 178 I.O. 286=5 R.R. 79

—O. 7, R. 11 (c)—Rejection of plaint—Duty of Court—Insufficiently stamped memorandum of appeal—Granting of time to make up deficit—Considerations.

Before rejecting a plaint under O. 7, R. 11 (c), it is the duty of the Court to require the plaintiff to make good the deficiency in stamp within a time to be fixed. Where

O. P. CODE (1908), O. 21, R. 58

memorandum of appeal may be received and time granted to make up the deficiency that may be found to be due. (*Dhoble and Agarwala, J.J.*) BAHURIA RAM SAWARI KUER v. DULHIN MOTIKAJ KUER

178 I.O. 160=5 R.R. 59=19 Pat.L.T. 885.

—O. 9, Rr. 2 and 4—Power of Court—Date not fixed for appearance of defendant—Order acquiring plaintiff to file

process fees or copies of the plaint before fixing a date for the appearance of the defendant. Such an order is illegal and failure to comply with it does not entail dismissal of the suit. A dismissal of the suit for failure to comply with such an order is without jurisdiction. (*Jamet, J.*) SHIPATI BARAN PRASAD SINGH v. IN-DARJIT MAHTON, 19 Pat.L.T. 854.

—O. 21, R. 2—Uncertified payment—Double payment to avoid execution—Suit for damages—Maintainability.

Where a decree holder executes his decree, notwith-

to set aside a decree or pays to recover any money paid thereunder; all that he wants is to recover damages for loss incurred by the payment twice over in respect of the same liability. (*Manohar Lall, J.*) RAVI DAS SAHU v. SUKHDEO RAM, 178 I.O. 196=5 R.R. 71.

—O. 21, R. 16, second proviso—Transfer of decree to Legal representative of Judgment Debtor—Execution against other judgment debtor's—Right of transferee.

The legal representative of a judgment debtor does

as the transferee of the decree is entitled to execute the decree against the other judgment debtors (*Dunkley, J.*) MA HLA YON v. MAUNG TUN YIN

1938 Rang.L.B. 609.

—O. 21, Rr. 58, 60 and 63 and S. 115—Objection under O. 21, R. 58—Duty of Court dealing with—If can go into question of title—Breach of R. 60, if a

whether the judgment debtor has transferred the property on his own behalf or on account of or in trust for some other person. If the property is found to be in possession of somebody else, then it has to be decided whether it is in trust or on behalf of the judgment debtor. The question of title to the property, is not the Court's concern, nor is it competent to consider and decide it. The order of the Court must be based entirely upon the finding on the question of possession. As the provisions of R. 60 are clearly mandatory and any breach

appellant to comply with the requirements of law, the

applicant under O. 21, R. 63. (*Mulla, J.*)

G. P. CODE (1908), O. 91. R. 63.

LAL v. RAM DIN.

1938 A.L.J. 1118=

1938 A.W.R. (H.C.) 816.

—O. 21, R. 63—*Suit under—If one in continuation of claim proceedings—Order allowing claim—Subsequent transferee from claimant—If alienee pendente lite—Transfer if void under S. 64—founder of transferee as party to suit after one year—Effect—Suit—If barred.*

A suit brought under O. 21, R. 63, C. P. Code, to set aside an order allowing a claim to attached property is a mere continuation of the proceedings in the claim petition. A purchaser of the attached property from the

G. P. CODE (1908), O. 41. R. 1.

the Court to make an order as the party or parties from whom the court fees are to be recovered. It follows, therefore, that after the suit is disposed of, the Court is at liberty, whether the Government is represented or not before it at the time, to make an order in favour of Government for payment of court-fees; and in making such an order, the Court will no doubt be entitled in the exercise of its discretion to direct which of the parties shall be liable for the payment of such court-fees. If no such order is incorporated in the decree of the Court, Government can seek to obtain such an order by an application made under R. 12. (*Birwas and Edgley, J.J.*) GOVERNMENT OF BENGAL v. T. &

transferee is not a necessary party. If the transfer is not also a real one, the transferee would then too be not a necessary party to the suit. S. 22(1) of the Limitation Act has no application to the addition of such a party after the period of limitation for the suit. (*Fauz Ali and Agarwala, J.J.*) MT. BAS KUER v. GAYA MUNICIPALITY. 17 Pat. 588.

—O. 21, R. 63—*Suit by unsuccessful decree holder—Frame of—If to be in representative capacity on behalf of all creditors—T. P. Act, S. 53.*

Capacity on behalf of all creditors—T. P. Act, S. 53, T. P. Act does not apply to such a suit under O. 21, R. 63. (*Fauz Ali and Agarwala, J.J.*) MT. BAS KUER v. GAYA MUNICIPALITY. 17 Pat. 588.

—O. 21, R. 92—*Fraud in conduct of sale—Suit to set aside sale—Maintainability.*

A suit to irregularly the sale is P. Code, under O. 2.

SATISH CHAKRAVARTY v. ... 48 O.L.J. 431.

—O. 22, R. 3 (1)—*Right to apply under—If confined to heirs of deceased plaintiff—Person claiming to be legal representative or claiming interest in continuance of suit.*

J. J. ... 48 L.W. 932.

C. P. Code, is that it not merely declares the right of the Government to recover the court-fees but also authorises

The general rule is that all persons having the equity of redemption ought to be brought on the record of a suit on the mortgage, the failure to bring any one of them on the record does not, however, necessitate the dismissal of the suit if the Court in his absence can deal with the matters in controversy so far as regards the rights and interests of the parties actually before it. The decree in the suit would not affect the interests of the parties not before the Court. But that does not mean that the Court can only pass a decree for something less

The Court can amount without of the parties. AMMAD YUNUS 38 P.W.N. 885. 19 Pat.L.T. 875.

—O. 40, R. 1—*Mortgage, simple—Suit to enforce—Receiver—Power of Court to appoint—Interest, rates and taxes in arrears—If sufficient ground for appointment of receiver.*

The Court in a suit on a simple mortgage has jurisdiction

equitable to appoint a receiver. (*Beaumont, C.J. and Sen. J.*) DAMODAR v. RADHABAI. 40 Bom.L.R. 1256.

—O. 41, R. 1 (2)—*Construction—"Whom any party to the suit has not a present right to remove"*

All that an appellate Court is required to do under is that it should peruse a pauper and the cannot be held arguments in support in forma pauperis, for to hold so would be to add something to the law on the subject and not to interpret it. (*Zia-ul-Hasan and*

COMPANY,

York, J.J.) **RAM LAL v. KALI CHARAN.**
1938 O.W.N. 1248.

COMPANY—Winding up—Surplus assets—Preference share-holders—Rights of—Arrears of preferential dividends—Payment of.

It was provided by the Memorandum of Association of a company that the preference shares should rank both as regards dividend and capital in priority to the ordinary shares. The articles of association provided

also a further provision that if the company should be wound up, the surplus assets should be applied in the first place, in repaying to the holders of preference shares the amount paid up thereon, and the residue should belong to the holders of ordinary shares. The

of preferential dividends could not be treated as "debts" and therefore to be paid out of the assets of the company before the "surplus assets" were ascertained. (*Lort Williams, J.*) **NEW RING MILLS CO., LTD. (IN LIQUIDATION), In re** 1 L.R. (1938) 2 Cal 633.

COMPROMISE—Construction—Conflicting claims to property of deceased Hindu—Claim by brother by survivorship—Claim by daughters as heirs—Compromise—Division of properties—Allotment of shares to brother and daughters—Letters to take jointly and enjoy as of right—Estate taken—Limited estate or absolute estate.

V and B were brothers, members of a Hindu family B died leaving two daughters V filed a suit against these two alleging that he and B were undivided that he was entitled to all the properties by survivorship and that the deceased's daughters were obstructing him in the enjoyment of the properties. The defendants claimed to succeed as heirs of their father to his share of the property, but before any written statement was put in, there was a compromise. By that compromise which was drafted as a partition, the properties were divided between the plaintiff on the one hand and the defendants jointly on the other. The daughters were to have a share in a family house jointly and to get a share of the

estate of a daughter under the Hindu Law and not an absolute estate (*Yadsworth, J.*) **NAGABHUSHANAM v. ANANDAYYA** 48 L.W. 939.

CONTRACT ACT (IX OF 1872), S 11—Contract with minor to marry—Breach—Suit by him for damages—Maintainability

A minor is not competent to bind contract to marry a minor is a major. The promise is no better than an unaccepted proposal. The minor cannot therefore, sue the promisor for damages for

COURT FEES ACT (1870), S. 8.

breach of promise to marry. (*Mysa Bu, J.*) **MA PWA KYWE v. MAUNG HMAT OVI.**

1938 Rang L.R. 667.

S 37—Scope—If mandatory—Decree on terms other than those contained in contract between parties—Power to make.

Wort, J.—It is clear that there is no obligation laid down by the legislature in S. 37 of the Contract Act to make a decree in terms of the contract and on

1938 P.W.N. 913 (F.B.).

S. 51—Party to agreement not carrying out his part—Right to complain of breach of agreement by other party.

A party to an agreement who has refused to be bound out his part of it cannot be other party has committed a breach because he has not performed allowed. If he performs his performance of the promise after is entitled to reasonable his promise (*Robert, C.J.*)

and *Dunkey, J.*) **A K A. C. T. A. L. CHETTYAR v. A K K. M. M. K. FIRM.** 1938 Rang L.B. 660.

S. 63—Remission of promise—Consideration, if necessary—Third party's right to take advantage.

A dispensation or a remission by a promisee of the performance of the whole or any part of a promise made to him does not require to be supported by consideration and there need not be a proposal of the dispensation or remission which is accepted. Hence a promisor is entitled to take advantage of the remission by the promisee of part performance of the promise, although he is not a party to the agreement in which the remission is embodied. (*Roberts, C.J. and Dunkey, J.*) **A K A. C. T. A. L. CHETTYAR v. A. K. R. M. M. K. FIRM** 1938 Rang L.B. 660.

CO-SHAREE—Remedy against another co-sharer—Ejectment or partition.

It is a well known principle of law that one co-sharer cannot bring a suit for ejectment against another co-sharer. His remedy may be by way of a suit for partition. (*Thomas, J.*) **ALI RAZA KHAN v. NAWAZISH ALI KHAN.** 1938 O.A. 845=1938 O.W.N. 1167.

Right to recover property from trespasser—If can assert right in whole property.

to recover the whole a right which he is of himself and his assertion of a right property in himself. (*Thomas, J.*) **ALI v. NAWAZISH ALI KHAN.** 1938 O.A. 845=1938 O.W.N. 1167.

COURT FEES ACT (VII OF 1870), S 8 and Sch. II, Art 17 (iv)—Appeal against order of tribunal constituted under U.P. Town Improvement Act—Court-fee payable—Provision of the Act applicable.

The Court fee payable in respect of a memorandum of appeal is payable in respect of the whole of the appeal. (*Benet, J.*) **DEBI DIN v.**

The appeal will not come under Sch. II, the Act. (*Benet, J.*) **DEBI DIN v.**

COURT FEES ACT (1870) S. 8.

STATE.

1938 A.L.J. 1124 =

—Ss. 8-C and 7 (iv)

valuation—Duty of Court—Sum not payable by plaintiffs and injunction—Proper valuation

Under S. 8 C of the Court-Fees Act, it is of course competent for a Court, in fact in many cases, it is the duty of the Court, to hold an enquiry regarding the proper valuation of the subject-matter of suit (iv) of the Act in cases in which there

or declarations and an injunction against the defendant, the main purpose of which was to ensure that a certain adjustment should be maintained under which the plaintiff had agreed to pay the defendant a certain sum provided the defendant agreed not to execute certain decrees which he had obtained against the plaintiff and not to take possession of some properties which the defendant had purchased at certain execution sales. It appeared to be highly probable that the advantages of

to pay to the defendant the sum due to him under the adjustment. The plaintiff valued the relief sought at Rs. 50.

Held, (i) that the valuation was as accurate as could be expected in the circumstances of not be at the sum payable to the defendant; (ii) that an enquiry under Court fees Act was, having regard to the facts stated above, unnecessary. (*Edgry, J.*) GAHAR ALI SIKDAR v. NESAR ALI. 43 O.W.N. 167.

—Sch. II, Art 11—Applicability—Dismissal of application under S. 9 (2) and (3) of U. P. Encumbered Estates Act as time barred—Order declaring that debt is to be deemed to be discharged—Appeal—Court-fee payable.

Where an application is dismissed as being barred by time according to S. 9 (2) and (3) of the U. P. Encumbered Estates Act and an order is passed that according to S. 13 the debt should be deemed to be discharged, and an appeal is preferred against it, the Court-fee payable is not *ad valorem*, but under Art. 11, Sch. II of the Court-Fees Act. The decision of the special Judge is an order only and not an order having the force of a decree. (*Zia-ul-Hasan and Yorke, J.J.*) SUKKHU v. NAND BAHADUR SINGH. 1938 O.W.N. 1221 = 1938 A.W.R. (O.O.) 136.

—Sch. II, Art 17—Applicability—Appeal against dismissal of suit for partition of joint family property—Proper Court-fee.

Where a suit for partition of joint family property of the defendant is dismissed on the ground that the payment of Rs. 15 as court fee on the memorandum of appeal is sufficient and *ad valorem* court fee is not necessary. (*Zia-ul-Hasan and Yorke, J.J.*) PARNESHUR DIN v. HARGOBIND PRASAD. 1938 O.W.N. 1265 = 1938 A.W.R. (O.O.) 139.

—Sch. II, Art. 17 (iv)—Applicability—Appeal against order of tribunal constituted under U. P. Town Improvement Act. See COURT-FEES ACT, S. 8 AND SCH. II, ART. 17 (iv). 1938 A.L.J. 1124.

CRIM. PRO. CODE (1898) S. 197.

CRIMINAL PROCEDURE CODE (V OF 1898)

IN COUNCIL, 1902.

1938 P.W.N. 869.

—S. 83—Applicability—Magistrate of Native State—Jurisdiction to issue warrant of arrest against person in British India.

and obtain the arrest of a person in the manner directed by S. 83, Cr. P. Code, S. 83 cannot apply to the State in its relation with British India, since it is State wholly outside British India. (*Harries, C.J. and Agarwala, J.*) HARAMOHAN PATNAIK v. EMPEROR. 1938 P.W.N. 869 = 19 Pat L.T. 909.

—S. 139-A (2)—Jurisdiction and duty of Magistrate

been issued, or whether the denial is only frivolous. Where the Magistrate finds that there is reliable evidence in support of the denial, he shall stay the proceedings pending the decision by a competent Civil Court

1938 A.W.R. (H.U.) 841.

—S. 162—Applicability—Summons case—Application by accused for copies of statements made to police—Refusal—Conviction—Sustainability—S. 537—Application of.

S. 162, Cr. P. Code, is applicable to the trial of a summons case as well as to the trial of a warrant case, and the accused in a summons case has a statutory right to be supplied with copies of the statements made by witnesses before the police. A refusal to grant his request for such copies vitiates the trial and conviction. S. 537, Cr. P. Code, cannot be called in aid to cure the defect, as the Court in such a case is bound to assume prejudice to the accused. (*Mahomed Lall and Chatterjee, J.J.*) DINANATH SAHAY v. EMPEROR. 17 Pat. 622.

—S. 162—Police diary kept under S. 172—Right of defence to use.

Police diaries which purport to be diaries kept under S. 172, Cr. P. Code, and which do not contain any statement by any witness, but are only brief records of what the investigating officer saw when he arrived at the spot,

ENFEROR. 68 O.L.J. 397.

—S. 197—Applicability—Officiating kulkarni—Collection of land revenue and misappropriation—Prosecution—Sanction—Necessity—Bombay Hereditary Offices Act, S. 38.

An officiating kulkarni can, under S. 58 of the Bombay Hereditary Village Offices Act, be removed by the Collector only with the previous sanction of the Provincial Government, and therefore he is a public servant

CR. P. CODE (1898), S. 233.

who is not removable from his office save by or with the consent of the Local Government within the meaning of S. 197, Cr. P. Code. But sanction under S. 197, Cr. P. Code, is only required for a prosecution for an offence committed while acting or purporting to act in the discharge of official duty. Where an officiating *kulkarni* collects money on account of land revenue,

40 Bom L.R. 1286

S. 233—Cheating by payment in foot dated

forthwith on framing charge whether he wished to cross examine prosecution witnesses—Omission to give reasons—If illegality vitiating trial

Though in ordinary cases the question whether the accused desired to cross examine the prosecution witness should be put to him not soon after the charge is framed

the accused forthwith. But the omission to record the reasons is not an illegality which vitiates the whole of the proceedings thereafter. It is a mere irregularity which is curable. If injustice has been caused. At best it is an omission in procedure contemplated by S. 357, Cr. P. Code. No doubt, if the Magistrate fails to ask the accused at all whether he wished to cross examine the prosecution witnesses, that would be a grave matter and might be an incurable illegality (*Harees, C. I. and Varma, J.*) NISAR AHMAD v. EMPEROR
1933 P.W.N. 832=19 Pat.]

S 297—Misdirection—Test—Charge as a whole

Before one can arrive at any opinion as to whether any particular passage in the summing up amounts to a misdirection or not, one must look at and consider the summing up in its entirety (*Costello and Nassim Ali, JJ.*) EMPEROR v. CYRIL BERTRAM PLUCKNETT
43 C.W.N. 133.

the parties is in law complete as soon as it is made, and it has the effect of acquittal even though one of the parties later on resiles from the compromise. On the

CR. P. CODE (1898), S. 443.

giving of a compromise petition signed by both parties in Court in respect of an offence for which no leave of the Court is required, the Magistrate is in duty bound to order an acquittal. The Magistrate has no jurisdiction to proceed further with case, nor can the complainant, by a subsequent withdrawal of the compromise petition before any order is passed on it, insist on the case being continued with. (*Manohar Lall, J.*) DHARICHHAN v. EMPEROR.
11 Pat L.T. 840.

315 (2)—Duty of Court—Compromise—acceptance by Court—Magistrate sending re-Superintendent of Police to ascertain latter's—Propriety—Proper course for ascertaining views of Crown.

In the case of an offence compoundable with the permission of the Court, if the Magistrate in effect though compromise effected by the parties to be acquitted. The Magistrate to send the views of the parties which are of a judicial character, to the Superintendent of Police for taking his views.

The Magistrate may be asked to take the views of the parties. (*H. J.*) 11 Pat. L.T. 840. NAIK v. EMPEROR.
11 Pat. L.T. 1147.

Magistrate having no power to send case out—Evidence properly assessed—Sessions Judge holding different opinion about evidence—Order directing commitment—Legality—Interference by High Court in revision.

An order of discharge passed by a Subordinate Magistrate which cannot be said to be improper, cannot

has a different opinion of the evidence especially when the Sessions Judge does not specifically find that there is a *prima facie* case, and when the dispute is in substance one of a civil nature. If the Sessions Judge sets aside the *prima facie* case and orders a committal, the High Court can interfere and set aside the order. (*Pandurang Rao, J.*)

UPPA GOUNDAN v. EMPEROR
1938 M.W.N. 1311.

S 439—Miscellaneous proceedings—Magistrate acting under Nalk Girls' Protection Act—Interference by High Court. See NAIK GIRLS' PROTECTION ACT, S. 4.
1938 A.L.J. 1147.

S 439—Power of High Court—Discharge by Sessions Judge—Prosecution witness—*prima facie* case made—Ordering commitment—Revision—Interference. See CR. P. CODE, SS. 437 AND 439.
(1938) M.W.N. 1311.

S 443—Applicability of Cr. P. Code.

CE. P. CODE (1898), S. 443.

Per *Castello, J.*—Chap. XXXIII, Cr. P. Code, was only designed to apply to cases of racial distinction where there is a real clash between a European as defined in the Code on the one side and an Indian on the other, or vice versa. (*Derbyshire, C. J. and Castello, J.*) **EMPEROR v. CYRIL BERTRAM PLUCKNETT.**

43 O.W.N. 120.

—S. 443—*Trial of case under Ch. XXXIII—Condition precedent.*

Per *Castello, J.*—There are two fundamental conditions precedent for the trial of case outside a presidency

provisions of the chapter. (*Derbyshire, C. J. and Castello, J.*) **EMPEROR v. CYRIL BERTRAM PLUCKNETT.**

43 O.W.N. 120

—S. 443—*Waiver of claim.*

Per *Castello, J.*—A European British subject can waive his right to be dealt with as such under the provisions of Ch. XXXIII, Cr. P. Code. (*Derbyshire C. J. and Castello, J.*) **EMPEROR v. CYRIL BERTRAM PLUCKNETT.**

43 O.W.N. 120

EMPEROR v. CYRIL BERTRAM PLUCKNETT.

43 O.W.N. 120

—S. 449 (1) (c)—*Application for leave to appeal—Limitation.*

and *Castello, J.*) **EMPEROR v. CYRIL BERTRAM PLUCKNETT.**

43 O.W.N. 120

—S. 449 (1) (c)—*Leave to appeal—Grant of Conditions.*

Per *Castello, J.*—The Court can only grant leave to appeal as laid down in S. 749 (1) (c), Cr. P. Code, on the unique ground that the case would, if it had been tried outside a presidency town, have been triable under the provisions of Ch. XXXIII. (*Derbyshire, C. J. and Castello, J.*) **EMPEROR v. CYRIL BERTRAM PLUCKNETT.**

—S. 449 (1) (c)—*Right to appeal.*

Per *Castello, J.*—The foundation of an appeal against the verdict and sentence given at a trial in the Sessions in the High Court contrary to the normal rights of a convicted person as laid down in the Letters Patent depends primarily and fundamentally upon the status of the applicant. (*Derbyshire, C. J. and Castello, J.*) **EMPEROR v. CYRIL BERTRAM PLUCKNETT.**

43 O.W.N. 120

—S. 476—*Expediency of prosecution—Enquiry as to—Duty of Court—Matters for consideration—Absence of finding that prosecution is expedient in the interests of justice—If fatal.*

A Court which orders a prosecution under S. 476, Cr. P. Code, must properly come to the conclusion that a prosecution is necessary in the interests of justice.

CRIMINAL TRIAL.

Though the absence of such a finding is not necessarily fatal, a Court dealing with these matters must apply its mind directly to the question, and in doing so it should consider whether an attempt to use the law in aid of a private grudge is being made and whether the Court should allow itself to become the instrument of a private grudge and also what facts can be proved and whether these facts are sufficient to support the conviction. (*Rowland, J.*) **BACHU SINGH v. TRIBENI SAH.**

1938 P.W.N. 904.

—S. 476-B—*Order on appeal directing prosecution*

order for prosecution

476-B, Cr. P. Code,

Magistrate refusing

order. But an appeal

may be treated as a revision by the High Court and dealt with as such. (*Rowland, J.*) **BACHU SINGH v. TRIBENI SAH.**

1938 P.W.N. 904.

—S. 488—*"Maintenance" of children—If includes their education.*

In a civilised state a human child can not be maintained simply by providing it with clothing and food. The mere maintenance of the body is not sufficient; provision has to be made for the child's developing

the education of

amount of educa-

country call for,

ing of "mainten-

ce. (*MacKney, J.*)

MA THEIN NYA.

1938 Rang L.R. 673.

19—*Change of circumstances—Advance in*

once in age of a child is a change of the child's circumstances within the meaning of S. 489, Cr. P. Code. (*MacKney, J.*) **MAUNO SHWE BA v. MA THEIN NYA.**

1938 Rang L.R. 673.

—S. 491—*Scope—If exhaustive—Power of High Court to issue Habeas Corpus. See HABEAS CORPUS—HIGH COURT.* (1938) M.W.N. 1289 (F.B.).

—S. 491 (1) (b)—*Illegally or improperly detained—Meaning of—Warrant issued by Political Agent under Ch. III of Extradition Act—Mere reference to commission of offence—No specific statement as to holding of inquiry prescribed by rules—Legality—Person arrested and detained under such warrant—Right to be set at liberty. See EXTRADITION ACT, CH. III.* 1938 M.W.N. 1304.

—S. 537—*Scope—Non-compliance with S. 256—Omission to record reasons for asking accused immediately on framing charge whether he wished to cross-examine witness—If curable. See CR. P. CODE S. 256.*

The High Court is reluctant to interfere with an order of acquittal, but when the trial Court commits a serious irregularity in the trial, the High Court will interfere and set aside the order of acquittal. Where the trial Magistrate holds a local inquiry without any notice to the parties and utilises his observation in the course of that enquiry for coming to a finding, and on the basis of that finding suddenly alters the charge and acquits the accused under S. 247, Cr. P. Code the order of acquittal is liable to be set aside. (*Varma, J.*) **BANKIM BEHARI SEN v. YUSUF MIAN.**

110 Pat. L. T. 918.

—*Duty of prosecution—Examination of witnesses—Rule as to.*

CRIMINAL TRIAL.

Though the prosecution need not be, irrespective of considerations of reliability, yet such of those with the unfolding of a narrative on based, must of course be called by the prosecution, irrespective of the effect of their testimony for or against the case for the prosecution. (*Niyogi and Gruer, J.*) **MUKTAWANDAS v. EMPEROR.** 1938 N L J. 434.

—Evidence—Reliability—Prosecution witness found unreliable—Evidence in favour of accused, if can be relied upon by accused.

Though a prosecution witness may have been found by a Court to be an unreliable witness, nevertheless the accused is entitled to rely on the statement of such a witness and particularly so where the circumstances support the statement. (*Ruchpal Singh and Ismail, J.*) **MATHURA v. EMPEROR.**

1938 A W R. (H O) 849

CUSTOM (Punjab)—Dastarbandhi—Significance.
The ceremony of *Dastarbandhi* or placing the *Dastar* or tying it round the head of a person, is not a ceremony of selection but it is a ceremony of installation. (*Thomas, J.*) **ALI RAZA KHAN v. NAWAZISH ALI KHAN.** 1938 O A 845—1938 O W N 1157

DANGEROUS DRUGS ACT (II OF 1930)—Procedure—Trial of offence under—Duty to avoid delay

In a case under the Dangerous Drugs Act, it is essential in the interest of justice that there should be as little delay as possible in the trial. (*Harries, C. J. and Varma, J.*) **NISAR AHMAD v. EMPEROR.**

1938 P W N 832—19 Pat L T 845.

—S 14 (a)—Punishment—Deterrent sentence.
An offence under the Dangerous Drugs Act is a most serious crime and a deterrent sentence must be imposed to stamp out such crimes. (*Harries, C. J. and Varma, J.*) **NISAR AHMAD v. EMPEROR**

1938 P W N 832—19 Pat L T 845

DECREE—Setting aside—Suit to set aside decree on ground of fraud—Maintainability—Conditions of—Nature of fraud—False statements in pleadings and evidence—Sufficiency—Proper remedy.

The mere making of a false allegation in a written statement even with knowledge of its falsity would not necessarily amount to a fraud on the Court, so as to render the decree in the suit liable to be set aside in a separate suit on the ground of fraud. The fraud which

Courts. A decree cannot be set aside on the ground that it was obtained by perjured testimony. The remedy in such cases is by way of appeal or by way of review and not a separate suit to set aside the decree. (*Pandurang Reddy and Krishnaswami Ayyangar, J.*) **RAMA NATHAN CHETTIAR v. PALANIYAPPA CHETTIAR.**

48 L W 946

truth of that fact. But in cases where the right of a party has already been concluded by previous judgment, that fact can be proved by the production of the judgment, since the existence of that judgment itself is relevant. (*Stone, C. J. and Clarke, J.*) **MAROTI v. JAGANNATHAS.** 1938 N L J 466

—S 68, proviso—Construction—Words 'Indian Registration Act, 1908', if refers to the particular Act alone.

EVIDENCE ACT (1872), S. 116.

of that particular "Registration Act" and not of any previous Registration Act. (*Wor, J.*) **JADUNATH MITRA v. ISAR JHA.** 178 L O 198—5 B R. 65.

—S. 90—Scope and effect of—Presumption of truth of contents of documents—If arises.

Under S 90 of the Evidence Act, documents more than thirty years old coming from proper custody prove themselves, but there is no presumption that the contents of the documents are true. (*Beasmont, C. J. and Sen, J.*) **CHANDULAL ASHARAM v. BAI KASHI.**

40 Bom L R 1262.

—Ss 101 and 102—Allegation that transfer is in violation of S. 12 of C. P. Tenancy Act—Burden of proof

It is on the person who asserts that a transfer is in contravention of S 12 of the C. P. Tenancy Act that the burden of proving it lies, for it is his application that would fail, if no evidence at all were given. (*A. L. Binney, F. C.*) **MANIKRAO v. RANCHANDRA**

1938 N L J. 474.

—S 114 (c)—Presumption under when arises—Person affixing thumb mark to bond, pleading fraud—Burden of proof

In a suit on a bond the primary burden is on the plaintiff. He must prove execution and consideration. But once he proves, or it is admitted, that the signature or thumb mark (it does not matter which) is the defendant's, then the presumption arises and the burden shifts to the defendant. He can then either prove that he cannot be charged because of fraud, etc., or that the presumption under S 114 cannot on the facts fairly arise. If he succeeds in doing that, then the burden shifts back to the plaintiff. (*Bose, J.*) **UDHEBAN v. VITHOBA.**

1938 N L J. 459.

—S. 115—Acquiescence—Ultra vires statute—How affected

An ultra vires statute cannot be validated by acquiescence, but an acquiescing party may be estopped from questioning it. (*Gruer and Niyogi, J.*) **MADHOO GOPAL v. SECRETARY OF STATE.** 1938 N L J 439.

—S 116—Scope—Tenant let in by landlord—Subsequent sale of property by Official Receiver in in-

Under S. 116 of the Evidence Act, a tenant cannot deny his landlord's as right to let the property to him, although the plea that the tenancy has ceased to continue or that his liability to pay the rent, either wholly or partially, has come to an end is available to him. The tenant is in such a case deemed to confess his landlord's title, and the plea that the tenancy has been

has been evicted against his will or forced to attorn to a person holding title paramount he would be freed from liability. A person who has purchased the property at an insolvency sale by the Official Receiver for over Rs 100, but who has not got a registered deed of sale duly executed in his favour has no title to the property and if a tenant let in by the original landlord attorns to such a purchaser that will not operate to discharge him from his liability to the original landlord or entitle him

EVIDENCE ACT (1872), S. 145.

to plead attornment to a person ha
in a suit for rent by the original l
in possession. (*Abdur Rahman, J.*)
NAIDU v. LAKSHMI NARASIMHA

—Ss. 145 and 155—S. 145, s

Questions about oral statements made—If can be dis-
allowed.

S. 145 of the Evidence Act must be taken as it is, un-
influenced by any consideration derived from the
previous state of the law or the English law upon which
it may be founded. It makes no mention of oral state-
ments. It therefore cannot control S. 155. Hence
questions with reference to statements made by one

ACT, Ss. 145 AND 155.

1938 N L J. 434

EXTRADITION ACT (XV OF 1903), S. 7—

Warrant under—Arrest of person named—Plea that
arrested person was not in Native State at the time of
alleged commission of offence mentioned—Sustainability
as a ground for release.

If it is proved that a prisoner arrested in British India
under a warrant issued by the Political Agent in a
Native State under S. 7 of the Extradition Act, in
respect of an offence alleged to have been committed by
him in that state, was in British India at the time at
which the offence with which he is charged is said to
have been committed that would be a good defence to
the charge. It is not, however, relevant to the question

HABEAS CORPUS.

issuing the warrants. The fact that the warrant does
not state or show on the face of it that the rules framed
for the procedure have been obeyed or that the warrant
merely states that so and so stands charged with offences
is no ground for presuming that the rules have not been
duly complied with or that no enquiry as prescribed by
the rules has been made. A person arrested and detain-
ed under such a warrant cannot be said to be

in the meaning of
le him to be set at
In the matter of C.
338 M.W.N. 1304.
S. 43—Hikar and
1) and (ii)—Con-

struction and scope—If alternative.

The provisions of R. 112 (c) (5) (1) and R. 112 (c) (5)
(iii) are not alternative in the sense that if the provi-
sions of sub R. 5 (iii) are observed it is not necessary
to observe the requirements of sub-R. 5 (1) of R. 112
(c) of Bihar and Orissa Factory Rules framed under S.
43 of the Factories Act. The word "or" occurring
between one sub-clause and another in R. 112 (c)
cannot be interpreted in such a way as to make the
sub-rules alternative. (*Varma, J.*) GURSARAN LAL
v. EMPEROR 1938 P.W.N. 903—19 Pat L.T. 836.

—S. 71—Claim to exemption from liability—
Burden of proof.

Under S. 71 of the Factories Act, the person who

C. P. MATHEN.

(1938) B. 33

—S. 7—Duty of Chief Presidency

Warrant by Political Agent in Native

arrest of person in Presidency Town—Warrant not
dated and not naming specific station or officer for
surrender of arrested person—If illegal—Arrest and
detention under such warrant—If illegal or improper

When a warrant issued by the Political Agent under
S. 7 of the Extradition Act is sent
Magistrate of a Presidency To
Magistrate has no option
execute the warrant. He is obliged
of the person for whom the warrant is
custody of such person is perfect.

The fact that there are defects in the warrant, namely,
that it is not dated that the direction in it is to surrender
the prisoner to the frontier Police Station in the Native
State without definitely naming a specific place, or that
it does indicate the officer to whom the prisoner is to be
handed over, is not a matter of any importance such as
to render the warrant or the arrest and detention there-
under illegal or improper, though they might be points
upon which the Magistrate might make a reference and
report to the Government under S. 8-A of the Extradition
Act. (*Burn and Stollars, J.J.*) In the matter of
C. P. MATHEN. (1938) M.W.N. 1304.

—Ch. III—Procedure under—Compliance with—
Presumption of—Warrant issued by Political Agent
merely stating commission of offence by person named in
warrant—No specific reference to enquiry—Effect—If
illegal or improper warrant—Cr. P. Code, S. 491.

The procedure before the Political Agent in cases
falling under Ch. III of the Extradition Act takes the

power does not necessarily denote any conduct on the
part of the appointer amounting to fraud in the
ordinarily understood meaning of the word. It only
means that the power has been exercised for a purpose,

INGS—NORMALLY. OFFICE—NORMALLY—NORMALLY.

48 L.W. 946.

GOVERNMENT OF INDIA ACT (1935), S. 107

(1)—"Existing India Law"—Bihar Money Lenders
Act (III of 1938)—If repugnant to existing Indian
law and void. See BIHAR MONEY LENDERS ACT,
S. 11. 1938 P.W.N. 913 (F.B.).

HABEAS CORPUS—High Court Jurisdiction to

issue writ—English common law, whether prevalent in
India—Issue of rule nisi by single Judge—Validity—
Criminal Procedure Code (V of 1893 as amended)
S. 491—Effect of—Madras High Court Rules, Appel-
late Side Rr. 2 and R. 3-A—Whether ultra vires.

The High Court or any Judge of the High Court can-
not issue the writ of Habeas Corpus in cases covered by
S. 491 of the Code of Criminal Procedure. Where a
Judge of the High Court issues a rule nisi purporting to
exercise the common law jurisdiction to issue a Writ of
Habeas Corpus, his order is without jurisdiction and is

HINDU LAW—Adoption.

consequently null and void. 54 Cal. 727 approved 14 and 45 Madras 922 overruled. (1928) A. considered. Rules 2 and 2 A of the Madras High Appellate Side Rules are *intra vires* the Court's (Leach C. J., *Mudharan Nair, Varadachariar v. worth and Lakshmana Rao, JJ.*) DISTRICT MAGIS TRATE, TRIVANDRUM v. K. C. MAMULN MAPILLAI. 1936 M.W.N. 1289 (F.B.)

HINDU LAW—Adoption—Bomb.
power to adopt—How affected by the

If a son dies before attaining 16 and without leaving either a widow or an adopted son, then the mother's power to adopt which was in abeyance during the son's lifetime revives, but the moment he hands the torch on to another, the mother can no longer retake it. Whether he has so done or not is a matter to be determined in each case, with reference to the state of affairs existing at the date of his death. The legal competency or otherwise of the person, to whom it is handed, is quite immaterial (*Bose, J.*) BAPUJI v. GANGARAM. 1938 N.L.J. 476

Custom—Kumaon—Collateral succession—Doctrine of representation—Basis of rule.

The real basis of the Kumaon custom which modifies the rules of Mitakshara as to collateral succession is that the estate is treated as if left by family tree who has left male heirs. If a man dies sonless his brothers' brothers, but as sons of the father's brother, are reverted on the sonless man's death (*Bennet and Verma, JJ.*) GANGI SAH v. HARLAL SAH 1938 A.W.B. (H.C.) 864 = 1938 A.L.J. 1177

of estate taken—If absolute estate or limited estate. See COMPROMISE—CONSTRUCTION. 43 L.W. 939**Debts—Father's debts—Insolvency of father and son—Creditors of father—Right to priority over creditors of son.**

Where a Hindu father and his son, who is a junior member of the joint family, are adjudicated insolvents by one order in an insolvency petition, a creditor who holds a debt, free from any taint of immorality or illegality, incurred by the father as manager of the joint family cannot claim any priority in respect of his debt over the debts incurred by the son. (*Abdur Rahman, J.*) THIMMAIAH v. OFFICIAL RECEIVER OF BELLARY 48 L.W. 9

Debts—Father's debt—Pious obligation of son—If continues after death of son—Mother inheriting to—Liability to discharge debt—Mysore Hindu Women's Rights Act, S. 10 (2) (g)—Effect of.

The pious obligation of a Hindu son to pay father's debt does not cease on the son's death, and passes on to his heir who takes his share on his death. A widowed mother who takes the estate of her son on his death is not relieved of the liability to discharge the debt which her son, as his father's son, was bound under the Hindu Law during his lifetime to pay. The fact that the provisions of the Mysore Hindu Law Women's Rights Act make that property *Stridhana* in the hands of the mother does not affect her liability to pay the debt in question, as the property inherited by her from her son came to her burdened with the debt which the son had a duty to discharge. (*Shankaranarayana Rao and Abdul Gham, JJ.*) JWARAMAL SANTHOPCHAND & CO. v. SEENIVASA RAO 11 Mys H.O.B. 566.

HINDU LAW—Widow.**Essentials**

tion to be
e clearly
d be set
apart as dedicated to that purpose. Further the donor should divest himself of the property. The question as to whether there has been such a divestiture, has to be

Stridhan—Woman married in unapproved form—Succession—Absence of mother, father and father's heirs—Right of husband and his heirs to succeed—Election to crown

On the death of a woman who was married in an unapproved form, in the absence of her mother, father or father's heirs, her *Stridhan* property goes to her husband, who, as her *Sapinda* must be held entitled to succeed by himself or his heirs. The property does not escheat to the Crown (*Beaumont, C. J. and Sen, J.*) CHANDULAL ASHARAM v. BAI KASHI 40 Bom L.R. 1262.

existence of legal necessity made by her to him, the reversioner is not precluded from recovering possession of the alienated property from the alienee, who was necessary and for the sale. NDRA NATH

I.L.R. (1938) 2 Cal 492.
Widow—Alienation—Content of restriction—**I.L.R. (1938) 2 Cal 492.**
Widow—Alienation—Necessity—Proof—Rectals in deed—Value of.

The rectals as to the existence of legal necessity in a

Widow—Alienation—Validity—Election or ratification by reversioners—Doctrine of

An alienation by a Hindu widow is, no doubt, only voidable and it is open to a reversioner either to ratify it or to elect to treat it as good. But if at the time of such ratification or election he was not aware of the real facts as to legal necessity and was, therefore, not aware of his right to avoid the alienation, the principle of ratification or election is not attracted to the case. (*Nasim Ali and Henderson, JJ.*) HARENDRA NATH MUKHERJI v. HARI PADA MUKHERJI. I.L.R. (1938) 7

Widow—Surrender—Gift of
favour of relation with consent of

HINDU LAW—Will.

Validity—Deed of consent not registered—If invalidates surrender—Subsequent adoption by widow—Right of adopted son to challenge gift.

M, a Hindu died in 1890 leaving *R*. *R* died first. *R* had a daughter *S* was the son-in-law of *M*. On 10 6 gift of all her husband's properties respondent, *M* who was the next reversioner to and approved of the gift orally at days later she executed a deed of *patra*, but it was not registered. More on 10 11-1922, *R* adopted the appellants against the respondent and his alienees to recover the properties, impeaching the gift deed on the ground that the deed of consent not being registered could not be regarded as a valid consent.

Held, (1) that the gift was a valid make a valid surrender of her entire husband's property in favour of the consent of the next reversioner, *M*, having been properly given, *R* ceased to have any interest in the property after the deed of gift, and the subsequent adoption of the appellants would give him no right to challenge the gift; (2) that there was no distinction in principle between an alienation by a widow of a part of her property for legal necessity and a complete surrender of her entire estate by a widow by way of gift; (3) that the deed of consent did not require attestation, because a mere *inter vivos* transaction which that *M* had at the time of the gift by *R* could be validly transferred, and there was no necessity for the consent of *M* being expressed in or evidenced by a registered instrument. (*Patra*, *J*) **PANDURANG v. ISHWAR.**

Will—Construction—Words "warrish"—Meaning of.

The Bengali words "uttaradhis" have exactly the same meaning and English word "heir". In the legal, rect sense of the word, an heir comes on the death of the ancestor and can, therefore, be the heir of a husband may, however, be sometimes use sense to mean a "heir presumptive". **DAS ROY CHAUDHURY v. GHOSH.**

INCOME-TAX ACT (XI OF 1922), S. 4 (2)—Profits—Assessees having money-lending business in British India and outside—Foreign business taking over immovable properties in discharge of debts due to it—Value of property situated in part as capital and in part as profits—Withdrawal from foreign business and remittance to British India—If taxable.

The assessees who were partners in a firm in foreign territory carried on the business in British India. The foreign firm took over in satisfaction of debt immovable properties which had been security for the debts. The value of these properties were treated as representing in part the return of capital and in part profits. The assessees in the year of account remitted to British India certain amounts and they contended that the profits represented by immovable properties were not capable of remittance, and so the remittances should not be taxed as profits.

Held, that the withdrawals from the foreign firm and remittance to British India were taxable as profits. **ITIAK v.**

INTERPRETATION OF STATUTES.

INDIAN (FOREIGN JURISDICTION) ORDER IN COUNCIL (1902)—Notifications by Governor.

Notes. Both of them are *infra vires* the order of 1902, The Railway Police at Dhenkanal Garb Railway Station are bound, under the terms of these notifications, to

In the case of a warrant issued by the District Magistrate of Dhenkanal, the police at Dhenkanal Garb Railway Station have no alternative but to act upon the warrant and to arrest the person named. The arrest of a person under the warrant and the subsequent production of that person before a Magistrate at Cuttack

arrest and detention cannot, however, be justified under S 54 (1) 7th para. of the Cr. P. Code. The warrant of the District Magistrate of Dhenkanal can hardly be

ed to any belief which may be entertained by a person, a warrant issued under the Extradition Act. (*Harries*,

imp of words—Duty of Court to give effect to.

Where the words of a section in a statute are plain, the Court must give effect to them, and is not justified in depliving the words of their only proper meaning in order to give effect to some intention which the Court imputes to the Legislature from other provisions of

It is a recognised principle that where one construction of an enactment will be in accordance with the existing enactments and another construction will be repugnant to them, the Courts will, where possible, adopt that construction which avoids repugnancy. (*Ross and Manohar Lal*, *J*) **MUHAMMAD YUNUS v. CHAM-PAMANI BIRI.** 1938 P.W.N. 685—

Similar Acts—Questions of ultra vires of Act—Decisions under one Act—Relevancy in construing another Act not in pari materia.

In constitutional cases and in all questions of *ultra vires*, the Court is not entitled to stray beyond the limits

LAND ACQUISITION ACT (1894), S. 9.

of the matter under discussion, nor lay down any general rule of construction of the Act. It is best not to widen the discussion by considerations not necessarily involved

JHA v. AMAN KHAN. 1938 F W N. 913 (F B)
LAND ACQUISITION ACT (I OF 1894), S. 9—
Sufficient notice but not special notice—Effect.

Where a person interested in the property sought to be acquired has had sufficient notice of the intended acquisition, he cannot make the absence of a special notice to him, a ground of complaint. (*Harries and Misra, JJ.*) SECRETARY OF STATE v. KARIN BUX 1938 A W R (H C) 833

—Ss. 11 and 13—Award—Procedure to be adopted—Compensation and apportionment—Dissatisfied claimant—Remedy.

According to the terms of S. 11 and sections of the Land Acquisition Act, Collector must, when he makes his account the interest of all parties, decide the amount of compensation and apportion it as between the claimants. A series of awards in respect of the same property is not contemplated by the Act. If a person interested is not given anything by the apportionment, his remedy is to claim a reference challenging the award and not to ask for another award in his favour. (*Harries and Misra, JJ.*)

v. KARIN BUX

—S. 18—Applicability—tenant—Claim for compensation

LIMITATION ACT (1908), S. 18.

Where a grantee under a patta transfers his interest to another, but there was no new contract or lease as between the transferee and the grantor, the relationship the terms of (*Hari, Ag.*) T SRINIBAS

=5 B R. 64.
paramount—

Defence of—Proof required.

In order to sustain a defence to a rent suit, founded upon an eviction by title paramount, two things must be proved by the defendant lessee, namely, (i) that he has been evicted by a third person and (ii) that third person had a paramount title, superior to the title of his lessor. The principle is well established that physical expulsion is not necessary; it would be sufficient if the tenant under threat of dispossession from a third person attorns to him and so converts his possession into possession of the latter. The mere assertion, even if this be a true assertion, by the third person that he has better title to

possession or should be taken in the eye of law to have taken possession of the demised premises. (*Mitter and Edgley, JJ.*) AMRITA LAL OJHA v. UTTAM LAL SARKAR. I L B. (1938) Cal. 559.

LETTERS PATENT (Calcutta), Cl. 41—Certificate under—Grant of—Conditions.

criminal matters to His Majesty in the application, to the conclusion exceptional circum-

LANDLORD AND TENANT—Acquiescence or estoppel—If can make good absence of registered instrument for a settlement of tenancy.

Where for the valid settlement of tenancy a registered deed was necessary as the property was worth more than Rs. 100, its absence cannot be made good by acquiescence or estoppel on the part of a party. (*J.*) SHIBA PRASAD SINGH v. CHAMRU PASI. 178 I C 562-5

—Permanent tenancy—Proof—Erection of pucca structures with landlord's consent.

The fact that the tenant erected some valuable structures on the land including a pucca wall and a pucca building with the connivance or consent of the landlord, would not in itself be a sufficient ground for holding that the tenancy is a permanent one. (*Jack and Patterson, JJ.*) GRINDHARI LAL MUNDRA v. PURNENDU NARAYAN ROY DEB BAKMA. 68 I L J. 481.

—Relationship—Transferee from grantee under patta—Rights—If governed by patta or record of rights.

way controls the operation of S. 48, C. P. Code, and whether it applies so as to extend the period prescribed by S. 48, C. P. Code? (*Broomfield and Norman, JJ.*) RANGO RAMACHARYA v. GOPAL NARAYAN. 40 Bom. L R 1278.

particular Tahsil, a very small portion of property in that Tahsil is included in the sale while the major portion of the property covered by the sale is situated in a different Tahsil, where the vendees did neither apply for mutation, nor care to obtain possession for a year after the date of sale and where further the witnesses to the sale were neither residents of the locality the property was situated, nor were they of it the vendees resided, the circumstances to lead to the inference ver ducent concealment sale entitled to pre-empt

LIMITATION ACT (1908). S. 22.

himself of the benefit of S. 18 of the Limitation Act and more than one not on that

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(H)

—S. 22 (1)—Applicability—Claim to property—Order allowing—Subsequent transfer by claimant—Suit to set aside claim order—Joinder of transferee from claimant after period of limitation—Effect on suit. See C. P. CODE, O. 21, R. 63.

17 Pat. 588.

—Art. 120—Applicability—Bombay Hereditary Offices Act, S. 36, proviso (3)—Suit under—Prayer for declaration of right in nearest heir of deceased watan—Limitation. See BOMBAY HEREDITARY OFFICES ACT, S. 36, PROVISIO (3).

—Art. 144—Alienation by alienated property—Limitation—

In the case of an alienation of shebait, the period of limitation that property will run not from but from the date of death of (Jack, J.) CHARU CHANDRA v. SM. NEPAN BALA.

43 C.W.N. 102.

—Art. 182 (5)—"In accordance with law"—Hindu

ance with law and steps-in aid.

An execution petition presented by a decree-holder prayed for arrest of the 1st defendant, who was a Hindu father after issue of notice to the defendants, the other defendants being the minor sons of the 1st defendant. The 1st defendant was then an undischarged insolvent and the decree holder had not obtained leave from the Insolvency Court to file the execution application. After the father was discharged the decree-holder again applied to execute the decree by arrest of the 1st defendant.

for execution to another Court—Application to transferor Court to recall execution—If saves limitation.

A Court which transfers a decree to another Court for execution does not thereby altogether lose control over the decree, but has still got certain powers including the power to recall the execution proceedings from the transferee Court. An application made to the transferor Court to recall the proceedings from the transferee Court is therefore one made to a "proper Court," and is a step-in-aid of execution which saves limitation under Art.

MADRAS ESTATES LAND ACT (1908), S. 26.

182 (5) of the Limitation Act, (*Fazl Ali and Agarwala, J.J.*) DWARKADAS GOBINDRAM v. SALIGRAM. 17 Pat 617.

RULES OF PRACTICE, complaint—Complaint—If

R. 384 of the Criminal Rules of Practice requires a magistrate to pay the expenses of all the witnesses to be summoned, though the complaint is a private complaint. The magistrate cannot require the complainant to pay batta for witnesses on the ground that it is a private complaint, (*Lakshman Rao, J.*) YOGANBAMMA, *In re.* 48 L.W. 969.

MADRAS ESTATES LAND ACT (1908), S. 3 (2) (d)—Estate—Inam village—Inamdar—If owner of both warans—Presumption—Onus of proof—Tanjore Palace Estate—Village comprised in—If "estate."

Is an order
the tenant
amdar who
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endant was
out a case
establish
nd that the
tenant
tres com-
Estate"
of the

defendant was let in under a terminable tenancy. A covenant in the muchlika executed by the tenant undertaking to surrender possession on three months' notice

(*Jagannatha Pillai v. RAMANATHAN CHETTIAR.* 1938 M.W.N. 1284.

—Ss. 5 and 125—Scope and effect—Sale by Collector for arrears of rent pending suit on mortgage of holding—If affected by his pendens—Transfer of Property Act, S. 52.

A sale of a holding by a Collector for arrears of rent due to the landholder after the passing of a preliminary decree and before the final decree for sale in a suit or a mortgage of the holding is not affected by his

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The sale by the
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WAMI CHETTIAR
48 L.W. 927.

of rent is not the voluntary act of the landholder, it becomes the act of the Court, (*Wadsworth, J.*) SESHAYYA RAO v. ARUNDHATAMMA.

48 L.W. 949=1938 M.W.N. 1279.

—S. 26 (3)—Applicability—If confined to original grants.

S. 26 (3) of the Madras Estates Land Act is not confined to original grants of land, but applies also to a grant at a reduced rate of land already in the possession of a ryot. (*Wadsworth, J.*) SESHAYYA RAO v. ARUNDHATAMMA. 48 L.W. 949=1938 M.W.N. 1279.

MADRAS HIGH COURT RULES (ORIGINAL SIDE). O. 7, R. 7 (2)—Applicability—Suit on promissory note and on basis of account—Leave to defend—Right of defendant to grant of without security.

A suit based on a promissory note is within O 7 of the Original Side Rules, but a suit for an account does not come within that order. In a suit to recover from the defendant a sum of money on the basis of a promissory note executed by him and also on the basis of an account, the defendant pleaded, *inter alia*, that the promissory note was executed under duress, and that the consideration for the promissory was unlawful as being opposed to public policy.

Held, that the defendant was entitled to defend the suit without security being required of him, and that he should be granted unconditional leave to defend (*Leach, C. J. and Matheson Nar, J.*) VENKATARAMAN NAIDU v. JAGANNADHAS, 1933 M.W.N. 1288.

—(Appellate side) Rr 2 and 2-A—Scope—If *ultra vires*. See **MADEAS CORPUS—HIGH COURT.** 1933 M.W.N. 1289 (F.B.).

MAHOMEDAN LAW—Waqf—Creation of—Existence—Plea of undue influence—Onus.

Where a document creating a waqf executed by a

MAHEB SINGH v. ABDUL AZIZ KHAN
1933 A.W.R. (P.C.) 206 = 1933 O.W.N. 1216 =
1933 O.L.R. 490 = 178 L.G. 386 (P.C.).

—Waqf—Validity—Waqf in respect of undivided property.

property, whether naturally divisible or not, for use as a mosque, this is a valid use of land and is not contrary to public policy. The doctrine of *musht* has always been held to be unadapted to a progressive society, and an exception based on such within the strictest limits. (*A*)
AYUB ALI v. ANIR KHAN.

—Will—Power of testator—Validity—Denial.

The power of a testator to make a will is a power. Such a denial of the power of a testator to make a will is contrary to Mahomedan Law and is not a public convenience, is mischievous, or is against the general principles of Mahomedan Law to allow the exercise of such a power. (*Thomas J.*) **ALI RAZA**

MYS H. WOMEN'S RIGHTS ACT (1933), S. 8.

—Order for restitution consequent on setting aside of execution sale—Appealability—Second appeal.

An order for restitution following the setting aside of an execution sale is an order passed under S 151, C. P. Code, and is not appealable. S. 144 does not apply to the case, the operation of S. 144 is expressly directed to cases "Where and in so far as a decree is varied or reversed." If the order is wrongly treated as one under S. 144 and an appeal entertained by the appellate Court, the High Court has jurisdiction to entertain a second appeal on the ground and set aside the order of the lower appellate Court. (*Shankaranarayana Rao and Abdul Ghani, JJ.*) **LOKAPALIAH v. CHANNAPPAH**

16 Mys L.J. 553 = 43 Mys H.C.R. 523.
—S 151—Applicability—Restitution—Execution sale—Setting aside—Order of restitution consequent on—If falls under S. 151—Appeal See **MYSORE C. P. CODE, SS. 144 AND 151.** 11 Mys.H.C.R. 523.

—S. 151—Inherent powers—Restitution—Power to award mesne profits.

In ordering restitution under its inherent powers, a Court has power to go into the question of mesne profits and award mesne profits, a separate suit for such profits is not necessary. (*Shankaranarayana Rao and Abdul*

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11 Mys H.C.R. 523.

—*farious suit—*

do not be multi-

farious, i.e., they should not be concerned with different

A plaintiff who wants to prosecute a multi-suit has to show that he comes within the language of R. 3 of O 1, which lays down two conditions: (1) the suit must be for reliefs in respect of or

Singaravelu Annadurai, J.J. VANDANA v. LUDHA VELLAPPA. 16 Mys.L.J. 561 = 43 Mys H.C.R. 512.
GHTS ACT

Rights Act is also to person are governed by

by might not be a mother to share at such partition—Retrospective operation.

PROV. S. C. C. ACT (1887), Sch. II, Art. 41.

Art. 41 of Sch. II to the Provincial Small Cause Courts Act applies to such a suit and as such it could not be entertained in that Court. In such a case the position of the parties as co judgment debtors liable for costs cannot be divorced from their position as co-sharers which resulted in this liability. (*Gruer, J.*) JAGANNATH v. SURAJMAL. 1938 N.I.J. 457.

Sch. II, Art. 41—*Co sharer tenant setting aside rent sale by deposit under S. 174, B. T. Act—Suit by him against other co sharers for their proportionate share—If one for contribution.*

A suit by a co-sharer tenant, who has set aside a rent sale by making a deposit under S. 174 of the B. T. Act, for recovery from the other co sharer tenants sums of money proportionate to their shares, is not a suit for reimbursement but one for contribution falling under Art. 41, Sch. II of the Provincial Small Cause Courts Act. (*Mitter, J.*) RANJAN KUMAR v. BASANTA KUMAR. 43 C.W.N. 99.

PUNJAB DEBTORS' PROTECTION ACT (II OF 1936), S. 5—Application of—Insolvents.

S. 5 of the Debtors Protection Act affords protection to judgment-debtors "in execution of decrees," and does not, therefore, apply to persons who have been adjudicated insolvents (*Tek Chand, J.*) LABHU MA BANARSI DASS v. MST. BIBI. 40 P.L.R. 1057.

REGISTRATION ACT (XVI OF 1908), S. 47—Scope of—Priority—Compromise decree creating a charge—Same property mortgaged before registration of decree.

S. 47 of the Registration Act refers to a registered document and its operation from the date on which it would have operated, if no registration had been required.

S. 87—Scope of.

The operation of S. 87 of the Registration Act does not extend to those cases in which an application for registration is made out of time. (*Port, Ag C.J.* and *Manohar Lall, J.*) RAMPRATAP SRINARAYAN v. DARSAN RAM. 178 I.C. 505—5 B.R. 110.

REVENUE RECORDS—Settlement records—Entries in—If can be altered by private partition.

There is no justification to depart from the settlement of 1926, merely on private partition. The right to the land in a grove should be settled in a Civil suit, and the fruits to be enjoyed according to Land Records do not record control.

in deed of assignment—Right of parties—Right of assignee to recover more than amount of valuation in assignment deed.

S. 26 of the Stamp Act only applies to cases where the amount or value of the subject-matter of any instrument chargeable with ad valorem duty cannot be ascertained at the date of its execution. It does not apply to the case of an assignment by way of gift in which an estimated value is given of the interest assigned. The parties to an assignment of a debt are under

T. P. ACT (1882), S. 55.

no compulsion to value it at the entire amount due. There is nothing in the Act to limit the right of the parties to value a chose in action at any amount they may think fit or to penalise them for doing so. The fact that a certain value is given in the assignment deed does not preclude the assignee from recovering or claiming more than that amount from the debtor. (*Rowland and Manohar Lall, J.J.*) MUHAMMAD YUNUS v. CHAMPANANI BIBI. 1938 P.W.N. 885—19 Pat L.T. 876.

SUCCESSION ACT (XXXIX OF 1925), S. 228—"Proved"—Meaning of.

The word "proved" as used in S. 228 of the Succession Act was not necessarily intended to be the equivalent of "admitted to probate", but to mean authoritatively established as being valid according to the law of the place where it was made. (*Costello and Birwa, J.J.*) SUKUNAR BANERJI v. RAJESHWARI DEBI. I.L.R. (1938) 2 Cal. 507.

TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52—Applicability—Mortgage of holding by ryot—Suit on—Preliminary decree—Subsequent sale of holding by Collector for arrears of rent under Madras Estates Land Act—If affected by lis pendens. See MADRAS ESTATES LAND ACT, SS. 5 AND 125.

48 L.W. 927.
S. 53—Applicability—Suit by decree-holder under O. 21, R. 63, C. P. Code—Frame of. See C. P. CODE, O. 21, R. 63. 17 Pat 588.

S. 54—Applicability—Sale in insolvency by Official Receiver—Purchaser not getting registered deed of sale—Title of.

A sale by an Official Receiver in insolvency is a private sale and the orders of a Court under which the auction is applied to such a sale and the property is Rs. 100 or more a registered sale deed. effected by an agreement, in English equitable doctrine property makes the sale of the estate is inapplicable to the sale of real estate in India in view of S. 54 of the T. P. Act (*Abdur Rahman, J.*) NARAYANASWAMY NAIDU v. LAKSHMI NARASIMHA RAO. 48 L.W. 959.

S. 55 (2)—Nature of covenant implied under—Vendor having neither title nor power to transfer a portion of area sold—Vendee not getting possession—His remedy.

The contract set out in S. 55 (2) of the T. P.

SWARUP.

(as amended in 1928), Ss. 59 and 100—Scope and effect of—Limited company—Debt issued by—Loan on security of specified immovable property—Registration—Necessity.

A debenture issued by a Limited company, the loan under it being stated to be on the security of specified immovable property, requires registration under S. 100 of the Transfer of Property Act read with S. 59 of the Act

reach of the mortgage over a case where area in question. NARAIN v. HAR 1938 A.L.J. 1136—1938 A.W.B. (H.C.) 803.

T. P. ACT (1882) S. 82.

as amended in 1929, even when the amount of the loan is less than Rs. 100. If the debenture is not registered, the holder of a debenture cannot be regarded as a secured creditor, although the debenture has been registered with Registrar of joint stock companies. (*Leach, C. J. and Madhavan Nair, J.*) *VISWANADHAN v M. S. MENON.* (1938) M.W.N. 1286—48 L.W. 952.

—S. 82—Contribution—Right to—Two mortgages in favour of same person—Later mortgage including extra item of property—Decree on later mortgage—Sale subject to earlier mortgage—Mortgagee purchasing all items except one purchased by third party—Effect—Contribution for proportionate amount—Value of property—Ascertainment—Material date.

Where there were two mortgages in favour of same person and the later one included an extra item of property and the mortgagee obtains a decree on the

against the third party in respect of the proportionate amount payable by him. The effect of the purchase is to break up the integrity of the mortgage, and a portion of debt which bears the same ratio to the whole amount of the debt as the value of the property purchas

with insufficient court fee—Deposit of mortgage amount after return of plaint and before representation with full court fee—Validity of—Plaintiff aware of deposit when represents

A deposit under S. 83 of the T. P. Act after a suit on the mortgage with an insufficient court-fee and been represented with sufficient cost and valid deposit. When once the amount due on the mortgage is retained until the decree is passed, interests, etc. The fact that the plaintiff paid an inadequate court-fee is

48 L.W. 929.

—S. 108—Monthly tenancy—Notice to quit—Validity.

The validity of a notice to quit ought not to be determined on the splitting of a straw. A notice served on a monthly tenant in Kartic 1337 requesting him to vacate the land on the 1st of Pous 1337 is valid, although it does not require the tenant to vacate the land with the expiry of the month of Agrabayan. (*R. C. Mehta, J.*)

U. P. TOWN IMPROVEMENTS ACT (1919).

take possession of the whole of the *jama* the notice is valid although it contains an inaccurate description of the land. (*Jack and Patterson, J.J.*) *GIRIDHARI LAL MANDRA v. PURNENDU NARAYAN ROY DEB BARMA.* 68 C.L.J. 481

—Ss 122 and 123—"Voluntarily"—Meaning of—Exercise of power of appointment—Registered instrument, if necessary

The word "voluntarily" in S 122 of the T. P. Act bears its ordinary popular meaning, denoting the exercise of an unfettered freewill and not its technical meaning of "without consideration" The donee of a mere special power of appointment, in exercising that

"voluntarily", as he appoints with the appointment, though it may be a "transfer", does not amount to a

U. P. TOWN IMPROVEMENTS ACT (1919).
S. 8 Rang L. B. 678.

ACT (XXV OF 1919)
of a miscellaneous
mafi plot in the City of Lucknow, if one

As regards a definition of who is a landlord, the emphasis is on a mahal so far as the proprietorship of a specific share is concerned; otherwise there is a reference to the proprietorship of specific plots. The holder of

clerk, the parentage of certain grandchildren, parties to the application under S. 4 of the Encumbered Estates

h the mandatory provision. 4. When it is too late to be rejected. If an

order has been already passed under S. 6 the Board would cancel it under its powers under S. 46. (*Darling, S.M. and Mehta, J.M.*) *JOTI PRASAD v. KHASAN.* 1938 O.W.N. 1214—1938 E.D. 923.

—Ss. 9 (2), (3) and 13—Dismissal of application as time barred under S. 9 (2) and (3)—Order declaring that debt is to be discharged—Appeal—Court fee payable. See COURT FEES ACT, SCH. II, ART. 11—APPLICABILITY.

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1919)—Appeal against order of Tribunal

U.P. TOWN IMPROVEMENTS ACT (1919), S. 64. WILL.

under the Act—Court-fee payable. See COURT-FEES ACT, S. 8 AND SCH. II, ART. 17 (iv).

1938 A.L.J. 1124.

—S. 64—President and assessors—Relative pos-

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WILL—Construction—Absolute

—Construction—Avoidance of intestacy.
One of the golden rules of interpretation of wills is, if it is possible, to so construe a will as to avoid intestacy. It does not mean that a Court is entitled to misconstrue

a possible and should adopt it.

NAWAZISH ALI
38 O.W.N. 1157.

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ices of language /.) ALI RAZA
1938 O.A. 845

1938 O.W.N. 1157.

—Construction—Principles—Intention of testator.

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testator uses in- ent words are of

such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense. (Sen, J.) GURUDAS ROY CHAUDHURY
v. BHUPENDRA NATH GHOSE. 43 C.W.N. 141

